A Review of the Handling of the Case of Mrs. X

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Reviewer

Submitted to Mr. Guy LeBlanc
Minister of Community Services
Province of Nova Scotia

November 9, 1990

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INTRODUCTION

On June 4, 1990, the Minister of Community Services announced a review of the handling of the case of Mrs. X within the following terms of reference:

1. The review is to deal only with the case involving Mrs. X and to determine what, if anything, was inappropriate in the agency's handling of this particular case.

2. In the conduct of this review, public hearings will not be held because of the sensitive nature of matters involving children. However persons who have information about the case of Mrs. X and the agency's handling of that case, will be given an opportunity to present their information orally and/or in writing.

3. Upon completing a review of the case involving Mrs. X, the Reviewer shall prepare a report of his or her findings and conclusions.

4. If it is determined that the case was handled inappropriately by agency personnel or anybody retained by or in the employ of the agency, the Reviewer shall identify the deficiencies and recommend a course of action in relation to those deficiencies.

5. The Reviewer is empowered to retain legal counsel as he/she feels necessary.

6. The Reviewer's report is to be submitted to the Minister of Community Services in the first instance and to be made public by him.

THE PROCESS OF CONDUCTING THE REVIEW

INTERVIEWS

During the course of this review from July 16th to November 9, 1990 the Reviewer received the full co-operation of the Board of the Children's Aid Society of Cape Breton, staff and foster parents as well as the professionals in other services who had been directly involved in this child protection matter. Both Mr. and Mrs. X and their relatives contributed willingly to the reviewer's understanding of the series of events that took place between June 1985 and this current year. As well a number of groups and individuals in the community responded to a notice of this review placed in the Cape Breton Post by submitting relevant information in writing or in person to the Reviewer.

The Reviewer held personal interviews with a total of fifty-two persons, some of whom were interviewed on more than one occasion. Nine further interviews were conducted by phone, and in each case were relatively short conversations to verify information given to the Reviewer and to confirm brief documented evidence given in Court on the matter. Among those interviewed were the following:

1. Mrs. X, accompanied at her request by her lawyer Mr. David Parsons during the first interview. Both sons now eight and five years of age were met by the reviewer in their home.

2. Two interviews with relatives of Mrs. X, the first with an uncle to Mrs. X, and the second with her mother and sister.

3. Mr. X, and on separate occasions, two of his relatives both of whom had provided supervision to his sons during visits with their father.

4. Both sets of foster parents who cared for the two children of Mr. and Mrs. X while they were under the temporary and permanent guardianship of the Society.

5. The President of the Board of the Children's Aid Society of Cape Breton Mr. Greg Boone as well as four Board members, Mr. Mel MacNeil, Ms. Joyce MacDougall, Ms. Effie MacDonald and Ms. Jean MacLean.

6. A number of staff members and a former staff person from the Society, including the following who were involved in any way with this matter:

Mr. Sandy Bowes, Executive Director

Mr. Ian MacPherson, Supervisor and currently Director of the Sydney Office of the Society

Mr. Jim Chisholm, Child Protection Worker

Ms. Sharon Kelloway, Intake Worker and currently a Protection Worker

Ms. Marie Boone, Intake Worker and currently a Protection Worker

Ms. Flo Lang, Intake Worker (retired)

Ms. Hildegarde O'Neill, Supervisor and currently Director of the Glace Bay office of the Society

Mr. John Janega, Protection Worker and currently an Adolescent Worker

Ms. Agnes MacMillan, Children-in-Care Worker now Adolescent Worker

Ms. Sandra MacNeil, Social Worker, currently Director of the North Sydney office of the Society

Ms. Colleen MacPherson, now with the Provincial Home Care program in the Cape Breton Region

Mr. Barry Moore, currently Intake Worker with additional responsibilities for public relations work.

Mr. Donald MacPherson, Chief Accountant

7. Present and former staff members involved in this matter from Family Services of Eastern Nova Scotia:

Mr. Ray Musgrave
Sister Rose MacNeil
Ms. Ilona MacKenzie
Mr. Jim MacNeil
Ms. Colleen MacPherson, and
Ms. Fran Tessier.

8. Present and former staff members who provided services to the family from Child and Adolescent Services of Cape Breton Hospital, Dr. Lowell Blood and Ms. Paula Hines.

9. Members of the RCMP Reserve Mines Unit, Constable Martell, Corporal R. D. MacQueen and Corporal Burrell.

10. Mr. Robert Schella, a former social worker with the Family Court for the Province of Nova Scotia.

11. Mr. Charles Keliher, legal counsel for the Children's Aid Society of Cape Breton during the series of Family Court Hearings to July 13, 1988.

12. Mr. Leo MacPhee, legal counsel for the Children's Aid Society of Cape Breton during the County Court proceedings.

13. A representative from the Cape Breton Society Against Child Abuse, Ms. Joan O'Connor.

14. Members of the Panel of the Community Consultation Group, established to receive concerns from the community on the delivery of child welfare services in the region. The panel's presentation included a representative of the Parent's Rights Group, Ms. Agnes Roach; a representative from the agency, Ms. Sandra MacNeil on behalf of the Chair, Mr. Frank Capstick; a

concerned parent from the area, Ms. Cathy Methven; and a staff member from the Nova Scotia Advisory Council on the Status of Women, Ms. Shirley Bardswitch.

15. Mr. W. D. Greatorex, Administrator, Family and Children's Services, Department of Community Services.

16. Mr. Alex Shaw, Solicitor, Department of Community Services.

17. Ms. Debra Burris, Supervisor, Child Abuse Registrar, Department of Community Services.

DOCUMENTATION

The agency provided the Reviewer with the following material, which was thoroughly examined:

1. Two agency family files containing such information as initial intake reports and follow-up notes, court notices, pieces of correspondence, several summaries of Family Court Hearings, assessment reports, copies of a subpoena and summons and reports from consultants which were submitted to the Family Court and the County Court.

2. A file on the older child, containing such material as placement notices, correspondence, child abuse registry information, copies of Orders granted for care and custody, a Report on a Child in Need of Protection, a school report, a case conference report, and visit recordings between April and November, 1988.

3. A file on the younger child containing such information as correspondence, a Report on a Child in Need of Protection, Notices of Placement, a copy of the Order for Care and Custody

of both children, a completed medical examination of May 1988, application for Special Allowances, and a xeroxed copy of an original birth certificate.

4. The Child-in-Care worker file containing such information as an affidavit, a copy of the Report of a Child in Need of Protection, visit recording between April and November 1988, Xerox copy of original birth certificate, school test results and teacher report, two completed medical forms for both boys dated January 18, 1990, an original hand-written letter from Mrs. X to her sons at Christmas 1988, several photographs of the children and visit recordings from December 28, 1989 to January 19, 1990.

5. Copy of the complete transcripts of the Hearings in the Family Court for the Province of Nova Scotia, held July 17 1987, September 18 1987, November 27 1987, February 26 1988, April 5 1988, May 20 1988, July 11 1988, July 13 1988, and the written Decision for Care and Custody dated September 6 1988, by His Honour, Judge Darryl W. Wilson.

6. Copy of the Exhibit Books, Volumes I to Volume V containing 122 exhibits representing the complete list of documents in the possession of the agency as of May 1989 which related to any matter in the case of Mrs. X, excepting correspondence between the Society and its Solicitors.

7. Copy of the written report by consultant, Dr. Rosemarie Sampson, Halifax, N. S. dated January 19, 1989.

8. Copy of the written report by consultant, Mr. Ross Dawson, Toronto, Ontario, dated September 23, 1987, directed to the lawyer for Mr. X.

9. Copy of the Child Welfare Assessment completed by Dr. Marliess Sudermann, of London, Ontario, for the County Court for District Number Seven, dated September 11, 1989.

10. Copy of the Discovery Examination of Dr. Marliess Sudermann, held January 17, 1990.

11. Copy of the Discovery Examination of Mr. Jim Chisholm, Mr. Ian MacPherson, Mr. X and Mrs. X.

12. List of agency staff participating in training courses from 1987 to 1990.

13. Copy of the job descriptions for Executive Director, Director of Protection Services, and Child Protection Worker at the Children's Aid Society of Cape Breton.

14. Copy of Policy and Procedures - Protection Services, Children's Aid Society of Cape Breton, undated.

15. Office Procedures, Children's Aid Society of Cape Breton, undated.

16. Policy - Child Abuse and Neglect, Cape Breton District School Board, dated February 26, 1986.

17. Procedure to Responding to Complaints of Physical and Sexual Abuse, Children's Aid Society of Cape Breton, dated December 16, 1987.

18. List of Officers, Board of Directors, April 1, 1986, to March 31, 1991.

19. Copy of the Constitution of the Children's Aid Society of Cape Breton.

20. Minutes of January 24, 1990 Meeting of the Board of Directors, Children's Aid Society of Cape Breton.

21. Minutes of the Board's Executive Committee Meetings of September 26 1989, January 10 1990, February 13 1990, May 10 1990, and June 26 1990.

22. Press Release signed by Mr. F. A. Bowes (Sandy) Bowes, undated.

23. Copies of correspondence to the Children's Aid Society of Cape Breton from Mr. Leo MacPhee, legal counsel to the agency at the County Court Hearing.

Other Material Reviewed:

24. Complete transcripts of the Hearings of September 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 25, 27, and 28th 1989, in the County Court for District Number Seven.

25. Copy of the County Court Discovery Examinations of Mr. X, Mrs. X, Mr. Jim Chisholm and Mr. Ian MacPherson.

26. Exhibits tendered at the County Court Hearings.

27. Videotape of the disclosure of five year old child.

28. The Children's Services Act and Regulations, 1976 with revisions.

29. Child Welfare League of America Standards for Child Protective Services, 1980.

30. Canadian Association of Social Workers, Code of Ethics (1983).

31. NASW Standards for Social Work Practice in Child Protection (Silver Springs, Md: National Association for Social Workers, Inc., 1981)

32. Canadian Child Welfare Law, Bala, Hornick and Vogel, Editors (Toronto: Thompson Educational Publishing, Inc., 1990)

CONSULTATION

The Reviewer had five consultations with legal advisor, John T. Rafferty of Burchell MacDougall and Gruchy, Barristers and Solicitors, Truro, Nova Scotia. One consultation was held by the Reviewer with Barbara J. Chisholm, MSW, CSW, of Chisholm and Gafni, Child and Family Consultants of Toronto, Ontario.

WHAT ROLE SHOULD THE COMMUNITY EXPECT OF THE CHILD PROTECTION AGENCY?

"The purpose of protective service is to discharge the community responsibility for safeguarding the rights and protecting the welfare of children whose parents are unable to do so; and to see that neglected and abused children are protected against further experiences and conditions detrimental to healthy growth and development, and that children receive the kind of care that will provide the essentials for their well-being and development at home or in appropriate substitute care." This statement from the Child Welfare League of America's, Standards for Child Protective Service, succinctly defines the role of the child protection agency. The League's Standards have long been recognized by child welfare professionals throughout North America, and have formed the basis of the current Protection Manual of the Nova Scotia Department of Community Services. For at least the past six years Standards of the Child Welfare League of America have been adopted as a Manual of Policy and Procedure - Protection Services by the Children's Aid Society of Cape Breton.

The agency's powers and responsibilities derive from the provincial Children's Services Act, granting the Society "Objects" among which is "the provision of help for those children within the family whose parents are unable to care for them, and, where necessary, to provide suitable alternate care for those children whose parents fail to provide the basic needs of their children, or who violate their children's basic rights, or who abuse their children or who evade their parental responsibility with respect to the children." (Section 89)

Thus, the protection agency has the mandate to receive and investigate reports of the alleged abuse or neglect of a child, and to determine whether the child is in danger or whether minimum standards of care are being provided. If abuse or neglect is found, the parents are helped to meet the child's minimum needs. If parents are unwilling

or unable to change conditions or use social work help to do so, action is taken through voluntary agreements with the parents or through Family Court to make it possible to obtain appropriate care for the child.

The Children's Aid Society of Cape Breton is a private child welfare agency governed by its Board of Directors who are elected from the community it serves under the terms of the Society's constitution. The Children's Aid Society of Cape Breton decentralized in 1989, and now has offices in North Sydney, Glace Bay and Sydney. The major duties of Boards of private agencies generally include the selection of its Executive Director who administers the agency, the approval of policies to govern the agency, the review and evaluation of agency programs and the setting of priorities, the ensuring of management personnel policies and procedures, the negotiation of the Collective Agreement, and the provision of adequate resources to finance the programs. The Board is responsible for the overall direction of the agency and holds final authority within the agency.

WHAT SHOULD THE COMMUNITY EXPECT OF SOCIAL WORK PRACTICE IN THE CHILD PROTECTION AGENCY?

Child protection has long been one of the major areas of professional social work practice. As outlined in this agency's Manual of Policy and Procedures, it is the social worker's responsibility to inquire into reports of alleged neglect or abuse that have been received, to always be concerned with the needs and the protection of the child, and to help parents provide adequate care for their children, showing concern for the parents and believing in their ability to change. The attainment of service standards for carrying out these responsibilities rests to a great degree with the ethics, values, knowledge requirements and skills of the social worker.

The Canadian Association of Social Workers Code of Ethics (1983) is a broad practical guide which outlines the professional attributes and conduct expected of the social worker. The primary and fundamental professional responsibility is to the well-being of the client. This includes the ability to apply social work practice values of acceptance, self-determination and individuality without being discriminatory on any grounds of race, ethnicity, language, religion, marital status, gender, sexual orientation, age, abilities, socioeconomic status, political affiliation or national ancestry. Responsibilities are expected to be fulfilled with integrity, especially in relation to truth and fair dealing and with personal qualities of honesty and sincerity.

Competency in the performance of services and functions is another professional obligation. The social worker will not undertake a matter of professional practice unless there is an honest belief in one's competence to handle it. Collaboration with other professionals and a commitment to upgrade one's knowledge and skills is part of the professional's commitment to acquiring and maintaining adequate knowledge and abilities to meet practice requirements.

Adequate knowledge covers a knowledge and understanding of human development and functioning, knowledge of interpersonal communications, of social work intervention methods, of formal organizations, of social and relevant law, of professional ethics, and of the reasons for terminating services. As part of competence in quality of service, the Code specifically notes in its Commentary expectations of the social worker to terminate their service when a client's confidence has been lost, to keep clients informed of all relevant commitments and possible implications of their situation, to notify a client within a reasonable interval when unable to meet a request and to respond reasonably to client dissatisfaction, early and directly.

The social worker respects the intrinsic worth of persons they serve and ensures their individuality and rights are safeguarded. The social worker will maintain a reasonable level of objective self-awareness and will respect clients motivations and capacity for change. As much as is possible, the client and the social worker will work together in an atmosphere of mutuality.

The protection of confidential information covers not only the properly authorized disclosure of information but the need to ensure the client understands the requirement for needed information when it is requested by the worker. The professional social worker is expected to keep a permanent record of their assessments, intervention plans and social change strategies in order to monitor the implementation and the progress of their intervention. Social workers will avoid unnecessary conversation regarding clients and their affairs with anyone who does not have a need to know. The social worker is also expected to physically safeguard case records and personnel files.

The Code has sections relating to the need to ensure that outside interests do not jeopardize professional judgment, independence or competence; that professionals work for the creation and maintenance of workplace conditions and policies consistent with the standard of practice set by the Code; that excellence in the social work profession

is promoted, and that the professional acts to effect social change for the overall abenefit of humanity.

In summary, these basic principles of ethical conduct underline the maintenance of a reasonable standard of social work practice.

In addition to the Code of Ethics of the profession in Canada, is a body of professional knowledge that includes factual knowledge gained from a range of related academic disciplines as well as from that of social work. Knowledge gained from the humanities and social and behavioral sciences; knowledge of the application of problem solving in social work practice; knowledge of verbal and non-verbal communication; of policies, legislation, and program issues; of problem identification; selection of interventions and their evaluation; and knowledge of professional values, ethics, roles and responsibilities - all comprise the unique body of social work practice knowledge.

The profession of social work also requires a commitment to assuming responsibility for practice which can include interventions that have a risk of harm in the lives of individuals and families. Skills are required to work effectively with clients in such a way that allows for the expression of their concerns; to make correct assessments leading to interventions that are in the best interests of clients; recognizing and dealing openly with conflict, hostility and resentment; and identifying resources and gaps in service to alleviate some of the stresses in the lives of clients. These professional values, body of knowledge and social work skills are expected of all professional social workers whether they work in health settings, educational institutions, social services or other fields of practice.

With respect to child protection services, social workers must also demonstrate their acceptance of these professional standards. Professional values in child protection includes a self-awareness of one's own values and biases that can impact upon professional decision-making. The social worker must possess a recognition of the dignity of

the child as an individual and a commitment to assist in meeting the child's needs. The professional is also expected to hold a commitment to the child's family as the preferred family for raising the child. As well he or she must be committed to the rights of parents to fulfil their role and to have the services and resources that will strengthen their functioning.

Social workers in child protective services must possess specialized knowledge in many areas. The developmental needs of children, methods of child rearing, the importance of parents to children, emotional aspects of parent-child relationships, the effects of deprivation of parental care, the indicators of physical and sexual abuse, dynamics of families who abuse or neglect their children, the evaluation of risk to the child and the effect on children of changes in living arrangements are some examples. Specific knowledge is also required of the social worker in the appropriate use of authority and its legal basis to protect the child as well as being able to interpret its use to children and their families.

The child protection worker must also demonstrate skills fundamental to social work. These include being able to listen, to observe, to communicate, to understand, to confront and to engage in mutual problem-solving and conflict resolution. It is also necessary to deal appropriately with the feelings displayed by parents and to be aware of feelings that may become engendered within oneself so they do not bias one's work. Making decisions that vitally affect the lives of children and parents while balancing their respective rights, opinions, and feelings requires the expertise and self-awareness of the competent professional.

It is in the context of the Canadian Association of Social Workers Code of Ethics (1983), the Cape Breton agency's Manual of Policy and Procedures - Protection Services, and generally accepted social work standards and child welfare practice that the Reviewer examined the handling of the case of Mrs. X.

CASE BACKGROUND

In 1985 and 1986, both Mr. and Mrs. X each had a brief contact with the agency. Individually they had differing views about the way in which the other parent was disciplining their two young children and expressed those concerns to the Children's Aid Society of Cape Breton. The couple separated and eventually divorced in 1986.

In January 1987 Mrs. X came to the agency disturbed about the somewhat obsessive sexual behaviour of her five year old son not only to himself but to his two year old brother. As well she felt there were aspects of her ex-husband's behaviour which were inappropriate when he played with the boys during his visits to her home. The agency's Intake Worker talked to Mrs. X by phone a few days after her call and closed the matter on the grounds there appeared to be no reason to suspect abuse based on the information she presented.

In March 1987 Mrs. X came into the agency worried that her five year old son was refusing to go on overnight visits with his father. As a result of the child's refusal, the lawyer for Mr. X had just written her a letter alleging that she was in fact turning her son against his father who wished overnight visits with his five year old and his two and a half year old sons. Mrs. X stated to the Intake Worker that she wished the boys to have a good relationship with their father. She could not however, persuade her five year old son to tell her why he did not wish to visit with his father. Mrs. X asked whether a worker from the agency might be able to interview the youngster and learn the reason for his reluctance.

This request was not acted on by the agency. The workers involved in that decision saw the matter as a problem between the divorced parents which they felt needed to be dealt with by the

parents and their lawyers in an upcoming hearing to vary access. Mrs. X was not notified of this decision.

Two months later Mrs. X came to the agency stating no worker had contacted her since her last visit in which she requested help in understanding her son's reluctance to have visits with his father. Mrs. X related that her son was now becoming upset at the very prospect of a visit. When he did visit because of pressure he felt from his father he was displaying aggressive behaviour on his return. Mrs. X felt the five year old was possibly now suffering some kind of mental abuse and that the child protection agency was the appropriate service from which to seek help. The protection worker visited the home a week later and explained he would not interview the children as he observed they did not appear withdrawn nor emotionally upset. In his opinion, there was nothing to indicate sexual abuse by the father was occurring.

In the following weeks, the five year old son shared information with his mother that suggested to her there was inappropriate sexual behaviour towards the son on the part of her former husband. Mrs. X made an audiotape of her son's responses to her questions in which she attempted to record what he had previously shared with her. She hoped her son's own words might enable the professionals to take his comments seriously. In the opinion of the agency there was still insufficient information in this audiotape on which to base an interview with the child.

Mrs. X sought help from a number of professionals in the community as her fears increased. A counsellor at Family Services of Eastern Nova Scotia felt there was sufficient validity to warrant attention to the son's concerns to his mother and relayed this to the agency worker. In the opinion of the agency, the matter was seen as a continuation of a divorce conflict, and

that Mrs. X was using allegations of sexual abuse to deny access visits to her husband. When interviewed by the agency worker Mr. X denied he had ever acted inappropriately and expressed his wish to have the matter dealt with in Family Court.

Because the agency felt unable to convince Mrs. X her fears about possible sexual abuse by her husband were groundless and to get a timely assessment of all members of the family, the agency decided to bring the matter to Family Court through a Notice to Bring, a section under the Children's Services Act that allows an agency to require the parent or guardian to appear or bring a child named in the notice before a Judge at a place named in the Notice. Assessments of the parents and children were requested of the Cape Breton Hospital by the Family Court. On her initiative Mrs. X contacted the RCMP and asked them to investigate possible sexual abuse on the part of her husband as she had not been successful in persuading the agency to look into her son's concerns. The RCMP investigator first consulted with the agency protection worker, advised Mrs. X that her concerns were already known to the agency and that the agency wished her to contact the Children's Aid Society for further information.

During the assessment of the five year old at the Cape Breton Hospital less than three weeks after the Court Hearing, the boy made a disclosure to the psychologist which indicated inappropriate and unwanted behaviour of a sexual nature had occurred to him during a visit or visits with his father. This disclosure was videotaped and the psychologist immediately advised the agency that the child's statements needed to be treated seriously. He recommended a thorough investigation of the child's allegation. Mrs. X returned to the RCMP to advise them that her son had made a disclosure of sexual abuse to a therapist at the Cape Breton Hospital. After taking statements from both parents, talking to the therapist by phone and

searching the premises of Mr. X, the RCMP found no physical evidence which would be necessary before considering criminal charges. The agency did not pursue an investigation of their own in the matter to determine whether there were reasonable and probable grounds to believe that the child was at risk.

At the next Family Court Hearing held in September 1987, the Judge ordered that further assessments of both parents be undertaken, that their five year old son receive counselling from Cape Breton Mental Health Clinic, that Mrs. X receive counselling to assist with her parenting skills and that Mr. X have visits with his sons that were supervised by his relatives.

Subsequent activity between the mother and the agency continued to be polarized because of the concern by Mrs. X of possible sexual abuse and the agency's position that the real problem was one of marital conflict and an attempt on the part of Mrs. X to have access visits by her husband terminated. In keeping with the agency's recommendation to the Court both parents co-operated with the agency by continuing to receive counselling sessions. New information from Mrs. X's five year old son added to the mother's concerns even though Mr. X's visit with his sons were now being supervised by his relatives.

On March 22, 1988 the agency apprehended the children without notice to the mother when the supervisor and worker determined that the parents were unable to resolve the access dispute themselves, and that in their opinion the behaviour of the boys appeared to indicate they were under increasing pressure as a result. At a final Court Hearing five months later, a Wardship Order of August 19th, 1988 brought the two children into the permanent care and custody of the Society. The agency immediately initiated a new series of counselling sessions for both parents with another professional who had not known the family

before. The goal of the counselling was to help the parents resolve their differences and to return the children to Mrs. X. To facilitate the re-introduction of visits with their parents, the children were moved to a second foster home in the area after the first set of foster parents moved to another part of the province. The counselling sessions and the supervised visits appeared to go well from the parent's point of view. When Mrs. X expressed unease about her former husband's interactions with his older son during one of these visits, the agency supervisor called a case conference with two counsellors who had been seeing one or both parents, and the psychologist who was seeing the children. Concern was expressed about the emotional well-being of the children. It was decided at the conclusion of the meeting that the agency would cease all visits by both parents and that a permanent placement of the boys would be made with a previous foster family who had expressed interest in their adoption. Mr. and Mrs. X were so advised and without their knowledge their children were moved to this home two days after the case conference on November 29, 1988.

Mrs. X initiated an appeal in the County Court of Nova Scotia. A 'trial de novo' was granted and was held over a thirteen day period in September 1989. The public and the media were permitted access by the Judge to the hearings. The Judge ordered a resumption of visits with the parents to commence in late December 1989. An interim decision of the trial Judge returned the children to the mother on January 19, 1990. A final order was issued by the County Court on March 19, 1990 setting aside the Family Court Wardship order and returning the children to the mother's custody. Mr. X was granted monthly visits with his children as of July 1990 with supervision provided by the Cape Breton Mental Health Clinic and with the matter of access to be reviewed by the Court in December 1990.

Mrs. X made known to the Minister of Community Services her concerns about the agency's conduct of this matter as did members of the public. On June 4, 1990 the Minister of Community Services ordered a review of the handling of the case of Mrs. X. This report is the outcome of that review.

STANDARDS OF SOCIAL WORK PRACTICE IN THE CASE OF MRS. X

The following five sub-headings highlight some of the practice issues that very much influenced the way in which this matter was handled by the agency. Additional practice issues are included later in the section entitled Chronology of Casework Services & Decisions which contains a comprehensive outline of the entire case.

CASE RECORDS

(a) Content

It is essential that case recording be kept up-to-date and include a continuous account of the agency's provision of service to children and their parents. The agency's Manual of Policy and Procedure - Protection Services points out that recording is an integral part of casework serving to provide significant information to other social workers and supervisors, accurately retaining essential case facts for the worker, providing a basis for assessing case activity against planned objectives, and serving as an instrument of accountability to administration. The agency's Office Procedures also clearly spells out the requirement for timely recording and for periodic review by the supervisor. Such records are an essential component of the agency's accountability for all its social work activity including the assessment of progress in achieving goals, the basis of its decisions when initiating court action, plans for placing children in care, and other directions taken that would impact on the lives of children and their parents.

In the matter of Mrs. X, the amount of case recording covering the service to this family from early 1987 to early 1990 is negligible. Both the protection worker Mr. Jim Chisholm, and the Director of Protection Services Mr. Ian MacPherson, kept no

recording of the extensive nature of their respective child welfare activities in relation to Mr. or Mrs. X and their two children. What minimal recording did exist, comprised Intake contacts, several entries made by the Director of Placement, Hildegarde O'Neill in the absence of Mr. MacPherson and case recording completed by Agnes MacMillan, the social worker for the children when they came into care. There was a gap in her recording that extended for a period of thirteen months during which time both boys were in permanent foster care and without any contact with their parents. A separate interview with Mrs. X by social worker Sandra MacNeil was not available as Ms. MacNeil stated in Court she had regrettably destroyed all her notebooks in November 1988 when she transferred to a new position within the agency.

In testimony given in County Court both Mr. MacPherson and Mr. Chisholm confirmed they did not keep any recording of their actions. Mr. MacPherson stated he had not kept any records of his own extensive casework involvement judging that to be Mr. Chisholm's responsibility as the line worker in the case. As supervisor, Mr. MacPherson agreed it was his responsibility to ensure recording was done but that he had not checked to see whether Mr. Chisholm had completed any in this matter.

(b) Accuracy

In protective services where court action and legal evidence is required, accuracy of records is essential in order to provide specific evidence of neglect or abuse to document the sources of all information gathered by the agency and to ensure that important data is not left to vague recollections of memory.

The lack of documentation on the case files was very much reflected in the quality of the evidence provided to the Family Court by Mr. Chisholm and Mr. MacPherson in particular. Their justification in Family Court for apprehending the children and for seeking their permanent care and custody lacked the detailed and specific evidence of neglect expected of child welfare professionals to support such drastic interventions.

Lack of records led to instances of discrepancies in the details of a number of events. Some aspects of information given by Mr. Chisholm and Mr. MacPherson to persons involved in this matter was at variance not only with the understanding of other agency staff but with the content of RCMP reports. The recollections of some professionals in the community who attended agency case conferences differed from the perception of agency staff. Details of a case summary of the matter prepared under the direction of Mr. MacPherson for distribution to the Board of Directors held a number of major inaccuracies. The pattern of these discrepancies consistently revealed a negative bias towards Mrs. X.

Serious doubts were raised in the course of this review about the veracity of one recorded call in which both the phone call and its contents were attributed to Mrs. X by the Intake Worker, Ms. Marie Boone. Mrs. X firmly denies having initiated the contact or having inferred she was retracting her concerns. Her position that it was in fact the agency Intake Worker who initiated the call is supported in later correspondence from the agency to the Department of Community Services, in agency testimony given in a Family Court Hearing and again in the County Court Hearing of September 18, 1989.

The agency record made of the content of this same call from Mrs. X, stated that Mrs. X felt the sexual behaviour of the children was normal and that she had over-reacted when she

phoned a week earlier. On this basis the agency did not follow through on their plan with Mrs. X to make a home visit to help her understand her son's behaviour. Mrs. X denied she told the agency the behaviour of her son was normal, a comment which was out of keeping with the nature of the concerns she had been expressing. Her position appears to be supported in the case review forwarded to the Board of Directors in January 1990. The comment that the behaviour of the boys was normal given the age of the children was attributed in the case review not to Mrs. X, but to "the opinion of the workers that spoke with the mother." In spite of this, reports to other agencies still indicated the mother had called the agency to say she had over-reacted and that she felt her son's behaviour was normal. Furthermore, this same report was given to the Family Court and appeared as a factor in Judge Darryl Wilson's decision to grant Wardship in August 1988.

(c) Security of Records

The security of records is essential if confidentiality of client information is to be safeguarded.

The security of the six files in this matter was found to be less than adequate. One of the six files could not be located for this review. No explanation for its whereabouts could be provided by either Mr. MacPherson or Mr. Sandy Bowes, the Executive Director. Mr. MacPherson states he had placed it for safe keeping in a filing cabinet in the office of Mr. Bowes.

Mr. Chisholm and Mr. MacPherson both took major responsibility for handling the case of Mrs. X, yet maintained no documentation of the nature of the social work services they were providing in carrying out their role, the content of their discussions with other professionals nor their rationale for court interventions. This lack of documentation led to a number of discrepancies and to a serious inaccuracy in Intake documentation that resulted in Mrs. X not receiving the service she was told would be forthcoming. Although it is unclear what the missing file may have contained, its whereabouts remain unknown.

The failure to maintain accurate case recording by staff who were most involved in providing social work service in this matter, breached the agency's own policy and guidelines as well as the ethical standards of the profession. It ignored any priority for thorough documentation of a matter that led to court action and subsequent permanent guardianship of the children, the most serious action that can be taken in a child protection case. As supervisor Mr. MacPherson also failed to ensure the agency policies with respect to the requirement for recording were implemented by all the staff involved in this matter. As a result regular reviews of case recording did not take place and major discrepancies in the facts of the handling of the case occurred.

The level of professional and ethical standards with respect to the requirement for documentation and to the content, accuracy and security of available records was found to be unacceptable. Furthermore this situation left a serious gap in the agency's ability to be accountable for the actions of its workers and for its ability to respond objectively to outside concerns when they were brought to the Executive Director, Mr. Sandy Bowes.

USE OF THE COURT

As stated in the Manual of Policy and Procedure - Protection Services, Children's Aid Society of Cape Breton, the philosophy of the Family Court is one which holds that its use is to be a constructive step designed to protect the child from conditions harmful to his health, welfare, morals or emotional well-being. The Family Court is not to be used as a punitive action against either the parents or the child. A Notice to Bring is a section of the Children's Services Act which can be used if there is borderline neglect and the agency wishes the matter to be reviewed before the Court without removing the children. An apprehension occurs when a social worker from the agency with agent status takes a child into the temporary guardianship of the agency and places the child in foster care or other living arrangement. The agency must appear before the Family Court to give evidence of the abuse or neglect that justified the child's temporary removal from his or her parent(s). The term Wardship refers to the status of a child in the permanent care and custody of the child welfare agency. This care status is granted by the Family Court when all efforts to return the child to his or her family have been unsuccessful because the parents have not been able to adequately provide for the needs of their child.

Notice to Bring

As the two staff persons maintained their view of the problem in spite of new information, more and more pressure was exerted on Mrs. X to accept the agency's assessment that there was insufficient evidence of sexual abuse to interview the children and that there was nothing unusual in the older boy's behaviour that warranted an investigation. As the fears of the son increased about the visits with his father Mrs. X came to the agency once more to seek help in understanding his problem. When such assistance was not forthcoming Mrs. X explained to Mr. MacPherson that if it took her ten or twenty years she would still try to find out whether sexual abuse was

occurring. Mr. MacPherson advised her he would bring the issue to Court. He did so through a Notice to Bring.

> "Because of our inability to resolve this matter through the usual manner of interaction, it was decided to bring the matter to Court through a Notice to Bring."

At a Hearing on July 17, 1987, Mr. Chisholm stated that he did not interview the children nor have them assessed as the allegations of sexual abuse were not specific enough. He believed the children were

> "being affected by the kinds of roller coaster events that are happening that involve the parents, because the parents cannot seem to agree on what is best for the children."

> ".....The children did not appear to me to be children who were upset, or abnormally affected in any way."

Although the Notice to Bring action ordered assessments of both parents and children that would otherwise have taken a longer waiting period to obtain, there was no evidence that the parents were unwilling to be assessed nor was there specific evidence presented to the Court to show emotional neglect of the children by their mother.

There did appear however to be concern by Mr. MacPherson with gaining control over a situation in which the mother was persistent in asking for an investigation of possible sexual abuse and was refusing to let her children visit with the father until that was done.

Reflecting on the agency's action later in the County Court Hearing Mr. MacPherson noted that one of the advantages of a Notice to Bring was,

"... you end up with a power to gain a high level of investigation ... you can have specific orders instituted to facilitate the children not becoming children in need of protection." He added,

".... it is our experience that using the Notice to Bring in particular heated custody issues where you have cross allegations, is very effective in taking the heat out of these disputes."

At the next Family Court Hearing held September 18, 1987 the results of court ordered assessments for the parents and children were brought forward. They included a videotaped disclosure from the older son which indicated inappropriate and unwanted behaviour of a sexual nature had occurred to him during a visit with his father. The psychologist who did the interview, Dr. Blood, stated in a written report that the alleged incidents of sexual abuse by the child needed to be treated seriously and recommended a thorough investigation. He was not asked to testify at the Hearing nor the next Family Court Hearing in November, 1988.

Still remaining firm in his opinion there was nothing further to be done by the agency, Mr. Chisholm emphasized that unless the parents reached agreement on access visits the children would suffer emotionally. The access difficulties however had arisen when the older son refused to visit his father and when Mrs. X stopped all visits after hearing the nature of the incidents related by her five-year old son. Mr. Chisholm stated that out of concern for the needs of the children a possible outcome could be the removal of the children into the permanent care and custody of the Children's Aid Society. This statement did not address the on-going fears of Mrs. X who had been asking for an investigation that included an interview with her child, and it revealed a threatening and non-constructive approach in case planning to a matter still before the Court on a Notice to Bring. The

"unco-operativeness" of Mrs. X to abandon her concerns of possible sexual abuse led Mr. Chisholm to conclude,

> "It came to the point where it was just impossible to work with Mrs. X because of her adamancy in the matter."

At the same hearing, Mr. MacPherson stated,

> "I don't understand why two people cannot come to those terms and raise the needs of the child above their own, and particularly in these circumstances."

At the County Court Hearing in 1989, Mr. Chisholm explained that

> "the concerns at that time [March 1988] had gotten to the point where we were frightened for the children. It became clear that supervised visits as we had instituted them at that point, through the Notice to Bring, were not working. It was felt that we should take the next step to apprehend in order that the agency would control the visits and as well remove the children from that stressful situation..."

Mr. Chisholm consulted with Mr. MacPherson whose similar views as expressed to the County Court were,

> "... ultimately the taking of the children into care was to move toward, again, once again, stabilization. That much more authority used if you will, to get these parents to the point where this is very serious, what is happening to your children, very serious."

The Reviewer is aware that the Notice to Bring is used under somewhat different circumstances in various agencies in the province. Some workers as in this instance believe such a review of the family circumstances impresses upon the parents the seriousness of not making necessary changes in the quality of the care they are giving their children. Some agencies rarely use a Notice to Bring. The Reviewer's personal opinion is that a Notice to Bring, if used, should be done only after the agency has made every effort to help the parents and the children's care is still of a borderline standard.

The agency's Manual of Policy and Procedure appears to reflect the view that the children's situation needs to be serious before using the Family Court. It states:

> "When the parents have not been able to make necessary changes to improve their care of the child, they should be made aware that plans will be made to bring the child before the Judge of the Family Court to determine future plans for the child. Parents should know the seriousness of the various factors that constituted the neglect and abuse and should be made aware of the process through personal interviews, by letters or by both means whether or not they have been willing to work with the agency."

Apprehension

Mr. Chisholm and Mr. MacPherson having determined there was no sexual abuse issue, interpreted the children's deteriorating emotional health as due to Mrs. X's on-going state of concern about access. One professional who was involved in seeing the children, Dr. Blood, felt a decision made at case conference he attended was strongly influenced by the position being maintained by Mr. Chisholm and Mr. MacPherson. Seeing little alternative, Dr. Blood agreed with the

agency's plan to apprehend the children and remove them from the conflict between the parents that the agency felt they were in. No link in the anxious behaviour of the boys was made by the agency to the possibility they might have been subject to inappropriate sexual activity.

At the May 1988 Family Court Hearing held after the apprehension, Mr. MacPherson stated he viewed the continuing issue of sexual abuse as "a red herring" used "to gain a certain end." Mr. Chisholm on the other hand had explained to Mrs. X during the apprehension that through such action the agency

> "could gain the controlling hand, if you like, so we could further evaluate, number one, whether or not there was sexual abuse, help the children along with both her and [Mr. X] in terms of coming back home, so that we could ..... help us with further decisions as regard what the ultimate placement of the children would be."

In justifying the apprehension Mr. MacPherson explained to the Family Court in May 1988 how the use of such action was usually enough to motivate the parents to change;

> "As you are aware, children are taken as a last resort when their physical or emotional safety is at risk. Usually that's a very drastic step and it has drastic impact on parents, and it's a tremendous motivator, if you will, to have people re-examine where .... their positions and where they are and for a positive change."

He went on to explain that the agency was not able to effectively resolve the problem, "even with the forceful influence of the Court,

extensive Court Orders, strict Court Orders, ... that articulated what everybody's rights were...."

> "This is a very exceptional case. We have virtually no ... the only resolve has been to take these children. At least I can satisfy myself that has been effective to date."

He then stated to the Family Court that the agency intended to seek permanent guardianship of the children which they successfully achieved at a Hearing less than two months later.

Wardship

At the final Family Court Hearing on July 11, 1988 Mrs. X articulated her hope for the future not yet knowing what course of action the agency would be recommending to the Judge.

> "I was seeking return, hopefully, of custody of the children, and hopefully if it's in the best interests that [Mr. X] would have visitations with qualified supervision until the children would be secure enough to feel to want to be with him alone."

The children's anxiety had greatly lessened in foster care and was seen by Mrs. X's lawyer as proof they felt secure and were having supervised visits. On the other hand, the agency's lawyer Mr. Charles Keliher blamed the mother stating the children were "emotionally abused and that is as much a form of child abuse as the physical abuse itself or another form of child abuse."

He further stated;

> "I submit that what she testified here this morning was of convenience to have her children returned to

her, but if the children are returned to her, within a very short period of time they are going to find themselves in the exact same situation they were when they were removed."

At an earlier Hearing Mr. MacPherson had expressed a concern of his with respect to Mrs. X's ability as a parent;

"My fear, and it's a fear that I've shared with virtually every professional that is involved in the matter, I'm not really comfortable about how far [Mrs. X] is prepared to go to win her point."

As Mrs. X still could not give up her worry for the safety of her sons from possible sexual abuse the agency saw her determination as detrimental to the mental well-being of the children. The agency's lawyer put forward the recommendation from Mr. MacPherson at what was to be the final Family Court Hearing;

"It is the opinion of the CAS at this time, most unfortunately, but yet their duty as directed by statute, to ask that you find these children in need of protection and commit them to the permanent care and custody of the CAS of Cape Breton."

The two boys were committed to the permanent care and custody of the Children's Aid Society of Cape Breton in a written decision handed down by Judge Darryl W. Wilson, Judge of the Family Court on September 6, 1988.

Such an outcome to the agency's request came as a shock to all parties involved including Mr. MacPherson and Mr. Chisholm. It had not been their expectation that Wardship would be granted but that the imminence of such a move might still motivate the parents to come to some agreement about visiting arrangements. An immediate meeting

with the two lawyers for the parents was called together by Mr. MacPherson and a plan offered in which the parents could receive help from an independent counsellor to come to some agreement on access. If that was achieved, he explained, Mr. and Mrs. X could look forward to a resumption of visits with the children and could expect their subsequent return. Another meeting soon after with Mr. MacPherson, Mr. Chisholm, Dr. Blood, Ms. Paula Hines and Ms. Agnes MacMillan confirmed Ms. Fran Tessier at Family Services of Eastern Nova Scotia as the independent counsellor. Mr. and Mrs. X readily agreed to this plan. It was felt by the agency that the motivation of the parents would be at their highest level and that a positive outcome could be expected.

The parents experienced their supervised visits with their children as going well. In testimony given by Mr. Chisholm at the County Court Hearing, the children had shown no adverse reaction to the supervised visits. However a concern expressed by Mrs. X to her ex-husband during a visit with the children was judged by the agency as a continuing suspicion on the part of Mrs. X towards her husband. Another meeting of the same professionals was held. It was the view that if the children were returned to their mother and had to be removed again, the risk to the emotional well-being of the children would be too great. Were the children to be returned to the father if he had a plan they felt the placement would be disrupted by Mrs. X. Although Ms. Hines wished to see the mother have a chance and Ms.Tessier was willing to work further with the parents, the agency decided to promptly terminate the series of visits. The parents were notified of this decision and both children were immediately moved out of the area to live with a former foster family who had expressed the wish to adopt them.

The way in which the Court was used in this matter was not a constructive process for either the parents or for the children. It was not accompanied by an understanding, sensitive assessment of the worries of Mrs. X nor by a thorough investigation of her son's allegations as they became clearer. No one at the agency carefully

observed the children's behaviour in their home nor heard what they might have disclosed in an investigative interview. Nor did Mr. MacPherson and Mr. Chisholm give sufficient weight to the impact of separating the children from their mother with whom they felt secure. Without such basic essentials of social work knowledge, practice and skills the use of the Court in this matter became a means by which Mr. MacPherson and Mr. Chisholm sought to dissuade the mother of her concerns and to attribute the children's anxiety to her own fears. This in effect constituted an abuse of the authority vested in the agency and inherent in the worker's professional knowledge and skill.

REQUIREMENT FOR IMPARTIALITY

For child protection agencies, one of the most difficult situations is that of investigating abuse or neglect allegations made by one parent against the other in the midst of an access or custody dispute. The challenge for the social work practitioner in child welfare is that of treating the sexual abuse allegation in this context in the same way as any other sexual abuse referral while at the same time being aware of the possibility it could be a false allegation. The response of the social worker is crucial to the outcome of the investigation. If the allegation is too readily dismissed by the social worker as a manipulation by one partner to terminate visits by the other partner, then the investigation will inevitably be biased and will lack the thoroughness that is required.

In the case of Mrs. X a bias is evident as early as the first contact by Mrs. X with the agency in 1985. The couple's marriage had broken down in spite of marriage counselling. At this time the agency appears to have already accepted the opinion of counsellor Mr. Ray Musgrave from Family Services of Eastern Nova Scotia that Mrs. X was rigid and domineering and was trying to get rid of her husband. In a letter from Mr. Chisholm to the Cape Breton Mental Health Clinic dated July 30, 1987 Mr. Chisholm wrote of the agency's contact with Mrs. X in 1985:

> "It would appear that her reasoning for coming to our Agency was to see that this was accomplished, ie, Children's Aid Society of Cape Breton would tell him to leave."

In point of fact, Mrs. X had not initiated a contact with the Children's Aid Society in 1985 but rather she had gone to the Family Court to seek information with respect to divorce. It was a social worker at the Family Court Mr. Robert Schella who

referred her to the Children's Aid Society office because of his concern that the father might be physically abusing the children.

The couple subsequently separated and were divorced. The father's visits with the children in their mother's home went reasonably well until January 1987. Mrs. X wanted the two boys to have a good relationship with their father but became concerned when the older boy resisted visiting his father at his home. At the same time the boy was displaying what the mother considered to be inappropriate sexual behaviour which sometimes involved the younger brother. An Intake Worker Flo Lang subsequently raised the possibility with Mrs. X that sexual abuse of the boy by his father might be occurring. Mrs. X had not suggested that possibility herself nor did she want to consider it. The agency did not follow-up on this referral as Mr. MacPherson and the Intake Staff felt there was insufficient information on which to proceed. The validity of the comments made by the Intake Worker were dismissed in County Court by Mr. MacPherson as having been "Flo Lang's impression of an interview with [Mrs. X]."

Further complaints by her son brought Mrs. X back to the agency seeking professional help in understanding her son's refusal to visit his father. The next referral from the Intake Worker Ms. Flo Lang went to Mr. Chisholm who was supervised by Mr. MacPherson. The response of these two staff to this on-going request of Mrs. X reflected the same bias as was noted in 1985. They both determined that Mrs. X having divorced her husband, was now trying to stop Mr. X from visiting his sons by means of raising an allegation of sexual abuse. Mr. Chisholm's assessment of the five year old boy's concerns to his mother were given at a Family Court Hearing on July 17, 1987.

> "Mrs. X is somewhat overwhelmed by her situation, that she has, to a large extent, started off with a

very small seed and it has blossomed and blossomed and blossomed and she's been like a snowball rolling downhill, just picking up more and more and more."

"... She is ready at any point to jump on any little thing the child says, and to build it up, and to create and fashion in her own mind what she wants to hear."

Mr. MacPherson stated he was in charge of Mr. Chisholm's handling of the matter and that the problem was really a custody issue best resolved through counselling. It was their belief that Mrs. X had made up the allegations and perhaps had even coached the children. Mr. X said in his Discovery Examination, however, that he did not believe his ex-wife would ever coach the boys to say anything against him. It was also the view of Mr. Chisholm and Mr. MacPherson that this motive on the part of Mrs. X was causing tension around the access visits by the father and was in turn affecting the emotional well-being of both boys. This assessment of the situation by Mr. Chisholm and Mr. MacPherson was consistently maintained by them throughout the entire series of events that followed from the summer of 1987. It prevented them from effectively helping Mrs. X articulate the nature of the concerns from her son and from sensitively listening to what help she as a parent was requesting.

The two boys were apprehended in March, 1988. At a subsequent Family Court Hearing on May 20, 1988 Mr. Chisholm was asked if he had ever discussed in the course of his work with Mrs. X, what her wishes were and what would satisfy her about visits of the children with their father. Mr. Chisholm replied:

"Well, I've never sat down and directly confronted her with questions like that, but it always became obvious to me in any

conversations, that her end result, her goal was that Mr. X did not have anything to do with the children....."

When Mrs. X took the stand at the Hearing of July 11, 1988 she clearly stated that for which she had consistently been asking:

"that's all I would want was for my children to have qualified supervision in order to get the security back with their father."

This unwillingness on the part of Mr. Chisholm to take sufficient time to listen to Mrs. X, to fully understand the concerns expressed to her by her son and genuinely explore what could or could not be done, showed both a lack of skills fundamental to social work and a lack of respect for the client. Mr. Chisholm had also told the Family Court some months earlier that he had not had much intensive involvement with Mr. X either and had not questioned him in detail about the allegations of sexual abuse. In spite of this lack of thoroughness in his casework Mr. Chisholm stated to the Court that he placed little or no stock in the allegations against the father.

The supervisor Mr. MacPherson also allowed himself to make assumptions and drew conclusions that were to have a significant impact on the course of this case. He stated at the first Family Court Hearing of July 17, 1987 that he was prepared to "speculate" on the outcome of an upcoming assessment of the children by the Cape Breton Mental Health Clinic. It was his view that the assessment of the children's mental health would not reveal any concerns of sexual abuse but rather "larger concerns" supposedly relating to custody and access. However this was not to be the case. The assessment of the older boy by the psychologist resulted in a videotaped disclosure by the child

indicating inappropriate and unwanted behaviour of a sexual nature had occurred during a visit or visits with his father. The psychologist felt the child's alleged incidents of sexual abuse needed to be treated seriously and recommended a thorough investigation.

Mr. MacPherson did not view the videotape nor did he initiate any agency action. He still held to his belief that Mrs. X was trying to stop access visits to her husband by alleging he might be sexually abusing his son. Mr. MacPherson felt the onus was on the parents to resolve their differences over visitation and that by so doing the anxiety of the older boy would be reduced.

At Family Court Hearing on September 18, 1987, he stated:

> "I think Dr. Blood's report is accurate insomuch as that it addresses the issue that the Children's Aid Society wants to put before the Court, that this child is suffering in the middle. And if we put the allegations of sexual abuse aside and go at what is in the best interests of this child, ultimately there has to be a tremendous compromise between these two parties if the needs of these children are going to be addressed."

This continued lack of action on the part of both Mr. Chisholm and Mr. MacPherson to the concerns of the child as disclosed both to his mother and to the psychologist did nothing to protect the children from the possibility of sexual abuse. It also led to a totally unrealistic expectation of the parents. For a divorced couple to resolve an access dispute when both the mother and several other professionals have reason to believe sexual abuse by the father might be occurring was a solution that was beyond the ability of either parent to achieve

without a thorough investigation of the allegations co-ordinated by the agency. The parents' inability to resolve this dilemma and the anxiety of the children was used by Mr. Chisholm and Mr. MacPherson as justification for apprehending the children and gaining their permanent guardianship, a drastic course of action that had its roots in an approach that was superficial and very biased.

COLLABORATION WITH OTHER PROFESSIONALS

The assessment of the problem by Mr. Chisholm and Mr. MacPherson was conveyed by them to other professionals who accepted it as being valid and based on a thorough child welfare investigation.

RCMP Constable Martell, understanding the role of the child welfare agency to be that of managing the investigation of child abuse allegations and ensuring the protection of children, phoned the agency as a follow-up to a request by Mrs. X for the RCMP to investigate the possibility of sexual abuse. The content of his phone call to the agency and his decision not to proceed was put in his report.

> "It was indicated to me that Mrs. X may be the biggest problem in this case. Apparently she will stop at nothing to gain custody of her children....Chisholm advised that much thought and attention has been given to this case by his department but there is no satisfying Mrs. X. She has gone through three service counsellors and two lawyers and is still not satisfied. As for the tapes, Chisholm advised that anything indicated by the children was induced by their mother and she has hounded them so much that they will practically say what she wants to hear. This whole matter is at the point that Children's Aid are considering taking the children from her until this matter is finally resolved. As far as they are concerned, there is no evidence of any sexual abuse by their father. Chisholm feels that going to the police is just

another step by [Mrs. X] to fight her ex-husband for custody."

On the basis of this information the RCMP did not pursue Mrs. X's request for an RCMP investigation at that time. Constable Martell told the County Court that the RCMP relied somewhat upon the information the agency had given him and that Dr. Blood was going to be interviewing the entire family. Constable Martell, when asked to comment on whether children should be interviewed, said it would be a logical place to start in an investigation. (The RCMP did investigate the matter later, however, following a second request from Mrs. X after her son had made a disclosure to the psychologist at the Cape Breton Mental Health Clinic. Their investigations did not include interviews with the children.)

Some community professionals to whom Mrs. X was referred noted the controlling influence of the agency in their own assessment of the problem. Dr. Blood was asked to assess Mr. and Mrs. X and rendered his report to the Family Court in a letter dated September 2, 1987. He noted with considerable surprise the uniformly negative impact Mrs. X appeared to have had on the professionals with whom she had any significant contact. Mrs. X was described in reports given to the psychologist by the agency prior to his interview with her, as being obsessed, unreasonable and manipulative. Yet in the interview with Mrs. X Dr. Blood found her to be calm and quite reasonable though becoming agitated and almost obsessive when she discussed her worries about the safety of her children and the lack of response by anyone to her concerns. Later in the County Court Hearing in September 1989, Dr. Blood testified it was his view that the agency discounted the allegations to some degree because of the negative impact Mrs. X had made on people. In his estimation his report about the disclosure made by the son did nothing to change the opinion of the agency workers directly involved in the matter.

After the agency became permanent guardians of the children an independent counsellor, Fran Tessier, was engaged by the Children's Aid Society to assist the couple once more to try and reach a mutually acceptable agreement about access visits. In testimony before the County Court Ms. Tessier stated that prior to her counselling with the couple she had talked to Mr. MacPherson who gave her the background in the matter. The agency had also given her written reports on the case. She had accepted their position that there was no sexual abuse. The relaying of this information provided by the agency did not ensure the independence of a neutral person as had been agreed to by the professionals outside the agency who had been consulted about the plan.

A female therapist at Family Services of Eastern Nova Scotia, Sister Rose MacNeil was a professional who saw Mrs. X over the course of a year and had come to know her well. This therapist indicated to the agency her concerns about possible sexual abuse and felt there was sufficient information to justify the child's allegations being looked into further. In February 1988, she told the Family Court she had heard "insinuations" that she had checked out with Mrs. X. At no time had she ever felt Mrs. X had fabricated a story.

The biased influence of the stance taken by Mr. Chisholm and Mr. MacPherson was also very much noted within the agency itself. An example was given of the handling of an audiotape by Mr. Chisholm in which Mrs. X encouraged her son to talk about his concerns. It was reported by one worker that he repeatedly played the tape in an office shared by eight other staff and that the comments he made about Mrs. X lacked respect for the mother's concerns, for her as a woman and for her religious faith. The description of Mrs. X as discussed within the agency setting was such that one worker Ms. Sandra MacNeil felt very

tense about making her first home visit to the mother. As she told the County Court:

> "I was expecting to find someone that was perhaps mentally ill, who was preoccupied with her religion and who was quite bitter in terms of her ex-partner, the father of the children."...
>
> "Once Mrs. X and I began to engage in conversation, that feeling of mine disappeared. I found that my conversation with her was relatively straightforward and not unlike other interviews that I've participated in."

Information conveyed to other professionals to assist in their evaluations always reflected the biased perspective of Mr. Chisholm and Mr. MacPherson. Some professionals who were invited to take part in case conferences told the Reviewer they often felt the purpose of agency discussions with them was to gain their support for the agency's intended actions. And when an independent and unbiased counsellor was engaged, the agency forwarded reports prior to her sessions with Mr. and Mrs. X thereby jeopardizing the independent nature of the agreed upon plan.

The strong influence of the agency's assessment that had never been based on fact, limited the ability of other professionals to fully present their findings and to contribute effectively to the agency's direction in case planning.

ACCEPTANCE OF RESPONSIBILITY FOR CASEWORK AND DECISIONS

The role of the child protection agency is to take responsibility for the investigation of reports of alleged abuse and neglect of children, determine whether children are in danger or whether minimal standards of care are being provided, and to use social work knowledge and skills along with resources in the community to help the parents meet the child's needs. If parents are unwilling or unable to change conditions that will provide minimal standards of care, then a decision for court intervention may need to be taken when all else has failed.

After a careful examination of court testimony given in both Family Court and the County Court, the Reviewer could not help but note the reluctance of the agency to take full responsibility for its own decisions and its role as a child protection service. Casework services to Mrs. X by Mr. Chisholm were described to the Reviewer as comprised mainly of brief home visits to hear her concerns and to dispel her fears, to pick up the children for visits, and to serve Notices. Mr. MacPherson, supervisor, told the Reviewer that so little work was done with Mrs. X by Mr. Chisholm that it was one of the reasons he did not give her a new worker. Instead the basic problem-solving focus of the casework that the agency could have provided was given to the Family Service agency and to an independent counsellor. Court-ordered interviews with the children were given to the Cape Breton Mental Health Clinic. An investigation of the sexual abuse allegations was carried out by the RCMP at the request of Mrs. X, not at the initiative of the agency in spite of County Court testimony to the contrary by Mr. Chisholm. The RCMP conducted a criminal investigation that looked for evidence of sexual abuse that was beyond a reasonable doubt. The focus of their investigation was to determine if it was possible to convict the sexual abuser, not necessarily to protecting the victims. No investigation by the agency was done

to document whether there were reasonable and probable grounds to believe that the children were at risk. Remaining casework involvement with the matter of Mrs. X was done by Mr. MacPherson who interviewed the parents at their request, participated in case conferences with other professionals involved and who presented evidence in Court on decisions that had been made by the agency.

Other agencies called upon by the Children's Aid Society of Cape Breton had a clear expectation of the agency's mandate and believed the agency was carrying it out. As Corporal MacQueen noted in his RCMP report:

> "There is certainly a strong role for Children's Aid in this situation, and I will be so advising them and have so told the complainant."

At the County Court Hearings, Constable Martell felt the agency were carrying out their role.

> "I was convinced that they were, that they had the matter in hand, that they were well aware of the complaints made and were taking the steps that they saw fit to investigate."

He also stated that a logical starting point for an investigation to get at the root of the matter, would be to interview the children.

The Cape Breton Mental Health Clinic had long resisted the Children's Aid Society's attempts to have them conduct interviews with children when sexual abuse allegations had been made. The Clinic staff, not having the expertise, firmly believed that function to be within the role and mandate of the child

welfare agency. Nonetheless they reluctantly had to carry out such interviews with children when the agency had them ordered by the Family Court.

Dr. Blood, psychologist at the Cape Breton Mental Health Clinic, was asked by the Family Court to assess the children. During the course of his interview with the older boy in August 1987 the youngster disclosed in a videotaped session that unwanted and inappropriate sexual behaviour had occurred during a visit with his father. Dr. Blood advised the agency immediately and urged a thorough investigation by the Children's Aid Society. He did not consider his interview to have been an investigative interview nor did he consider it his role to elicit more information from the child for the agency. In May 1988 he also explained to the Family Court he did not meet the request from Mrs. X to interview the younger son who was expressing concerns as he felt it was not his role.

In the County Court Hearing other professionals expressed the same view. Ms. Paula Hines counsellor at the Mental Health Clinic told the Court she considered the Children's Aid Society to be the ones with the expertise to interview children who may have been sexually abused. At that same Hearing Ilona MacKenzie counsellor at Family Services of Eastern Nova Scotia told the court she considered the Children's Aid to have that special skill. Jim MacNeil who was then at the same agency, also stated staff there did not deal with child sexual abuse and that they looked to the Children's Aid and the Mental Health Clinic to resolve such an issue.

Mary-Jo Maur Raycroft an Ontario lawyer writes in Canadian Child Welfare Law of the difficult task of the protection worker.

"Investigations of allegations of abuse in the context of custody and access disputes can be extremely difficult,

and may be rendered more difficult by the atmosphere of mistrust and hostility. Allegations and counter-allegations may fly, leaving the protection worker to decide whether the evidence supports or refutes those allegations."

When Mr. MacPherson took the stand and was questioned about the investigation of sexual abuse allegations by very young children, he stated;

"We don't think this is particularly difficult. We get quite a few sexual abuse cases in this age range and they are not particularly difficult to investigate."

In spite of such an admission, no interviews with the children by Mr. Chisholm were ever done as both Mr. MacPherson and Mr. Chisholm had assessed the motive for Mrs. X's concerns to be a larger custody issue rather than the safety of her children. This assessment was made in spite of concerns to the contrary from Sister Rose MacNeil counsellor for Mrs. X, and Dr. Blood who was seeing the children in therapy. In 1989 Dr. Blood told the County Court:

"The opinion of people at Children's Aid was that the allegation of sexual abuse should be discounted. [Mrs. X] clearly was not going to let those issues be discounted and it seemed as long as it became all of a three way conflict, as long as the conflict between [Mr. X] and [Mrs. X] and the Children's Aid Society continued, that the kids were only going to continue to suffer and regress."

For professionals in other services, their collaboration with the agency was such that they felt at times that no one was in charge of the situation because no other service than the Children's Aid had the mandate to investigate the possibility of sexual abuse. Sister Rose MacNeil was unaware of what was happening in the matter and had to call to keep informed. In County Court she stated she was also having to keep other people updated on the agency's handling of the matter. Yet whenever the agency's decisions came under scrutiny, the staff involved would lay much of the responsibility for the rationale of their decisions on other agency professionals to whom they had delegated many of their functions. This was particularly done if the other agency professionals had ever supported the view of the agency and could be quoted for doing so. Dr. Blood therapist for the children did not know until many months later that the agency had not done a thorough investigation of his report on the child's disclosure. He had assumed they had done so as a child welfare agency and on that basis had agreed with them that there seemed to be no other alternative than the apprehension of the children. Thereafter he was frequently quoted by Mr. MacPherson to justify the apprehension of the two boys.

When the Reviewer asked Mr. MacPherson why he was so taken aback to gain Wardship of the children in August 1988, he stated that it was the decision of the Judge who had seen no progress, and that the outcome had nothing to do with the agency's recommendation to the Court for the Wardship of the children. Indeed, the agency had been telling the Court and the parents for over a year at previous Hearings that they might well seek that determination at some point in the future. Such an abdication of any responsibility in the outcome of that Hearing as well as responsibility for standard casework services reflected a shirking of their professional responsibility and accountability for their actions in this child welfare matter.

CHRONOLOGY OF SOCIAL WORK SERVICES AND DECISIONS

The following comprehensive chronology of casework events and decisions is based on letters from the family file, transcripts from Family Court and County Court Hearings, Discovery Examinations and from interviews with sixty-one individuals. Some information included here may also have been noted in the section entitled Standards of Social Work Practice in the Case of Mrs. X.

June 1985, September 1986 - Prior Contacts

A contact by the agency in 1985 with Mrs. X was responded to and documented appropriately by the Intake Worker, Sharon Kelloway. The parents who were about to separate were offered advice on their child rearing practices and the matter closed as the children appeared to have no behaviour problem and there was no evidence of physical abuse by Mr. X.

In 1986, Mr. X contacted the agency about a disagreement he had with respect to how Mrs. X had disciplined the older child. According to Mr. X, Mrs. X decided visits would go more smoothly if he took the children on visits to his home instead. The agency closed the matter as there were insufficient facts to proceed with an investigation.

January 31 to July 19, 1987 - Initial Services

In January 1987 Mrs. X called the agency worried about her son's obsessive sexual activity with himself and toward his two-year old brother. Mrs. X also felt there were aspects of her ex-husband's behaviour which were inappropriate when he played with the boys during his visits to her home. This Intake was taken by Mr. Jim Chisholm who told Mrs. X an Intake Worker would visit the following week. The Intake sheet did not contain other details of her son's

concerns which Mrs. X later told the County Court she had given at the time. Some of these incidents went back to 1986.

Instead of a home visit, a phone conversation took place between Mrs. X and Ms. Marie Boone, the Intake Worker. Ms. Boone recorded the call noting it was Mrs. X who phoned the agency to say she had over-reacted and now considered the game played with the boys by her husband was normal and was no longer influencing the behaviour of the boys. Ms. Boone closed the matter at that time.

In County Court testimony, Mr. Chisholm however, stated that it was Ms. Boone who called Mrs. X.

> "Marie Boone called [Mrs. X] about the information and discussed it with her and at that point in time the matter was closed, terminated."

At the same County Court Hearing, Mrs. X viewed the Intake sheet written by Ms. Boone and testified;

> "... it doesn't appear to be anything of the conversation that I did have with Marie Boone... I was in the middle of supper when Marie Boone called me. It was a very short conversation. She asked me did my ex-husband [Mr. X] ever play a game with the children and I said yes, he did play a game. And she said possibly it was just a game and left it at that and that was the end of our conversation."

Ms. Boone at the County Court Hearing explained that the call from Mrs. X lasted fifteen to twenty minutes, that she discussed the nature of the mother's concerns, and the signs of child abuse, and that

she felt Mrs. X was of the view the behaviour was normal. She closed the matter as there was nothing further to investigate. This action was appropriate based on that understanding. If, however, Mrs. X was indeed still very much worried about the upset and behaviours of her sons, a home visit and an in-depth gathering of the facts should have been undertaken. Not only would this have greatly eased the mind of Mrs. X, but the careful documentation of what the children were telling their mother could well have provided some new information.

Mr. Chisholm noted in County Court though not in his Intake in 1987, that he had advised Mrs. X to go to Children's Services at the Cape Breton Mental Health Clinic for advice on better understanding her son's behaviour at his stage of development. This is a sound recommendation for an agency to make if they have no sexual abuse concerns sufficient to warrant an investigation. As noted elsewhere in this report however, the discrepancy in the recording and subsequent statements identifying the initiator and content of the phone call indicate that Ms. Boone and Mrs. X held quite different views of the content of their phone conversation. According to Mrs. X she remained very worried about her son's behaviour.

In March 1987, Mrs. X came into the agency, perplexed by the fact her five-year old son was refusing to go on overnight visits with his father. His reluctant behaviour apparently first began following the death of Mr. X's mother in the summer of 1986 when his grandmother was no longer present during his visits. As a result of the child's refusal, the lawyer for Mr. X, Mr. Robert Crosby, wrote her a letter alleging she was turning the son against the father. (Mr. Crosby at this time was also the lawyer representing the Children's Aid Society of Cape Breton in Family Court Hearings unrelated to his representation of Mr. X to vary a divorce order with respect to access.) Mrs. X asked whether a worker from the agency might be able to interview the youngster and learn the reason for his reluctance. The Intake Worker was Ms. Flo Lang, a worker with twenty-five years experience. She held a lengthy interview with Mrs. X and gathered a

comprehensive amount of family information. It was the Intake Worker's view that Mrs. X had been fair in her attempts not to influence the boys against the father. On hearing the mother's concerns, Ms. Lang herself raised the possibility of sexual abuse. Mrs. X did not wish to consider this but admitted she no longer knew what to make of the situation. Ms. Lang, besides alerting her to the possibility abuse could be happening, suggested she get a lawyer from Nova Scotia Legal Aid and that she stop protecting her husband in order to maintain the father-son relationship which Mrs. X very much wanted.

The Intake information went to the supervisor, Mr. Ian MacPherson who decided which Intakes would be followed up. In a letter to the Child Abuse Registry in Halifax, Mr. Chisholm pointed out this referral,

> "was not acted upon because it was seen largely as a squabble over visitation rights which needed to be settled by the upcoming court hearing. [The older son's] refusal to go with his father was understood as a symptom of the friction between the two parents and was not uncommon in these situations."

Mrs. X was not informed of the agency's decision in this matter which should have been done because she had made a request for assistance was made to the agency. As no one from the agency other than Ms. Lang had interviewed the mother at this point, it is questionable how a request from Mrs. X to assess her son's concerns resulted in that conclusion without the gathering of more information. Furthermore, the experienced Intake Worker had herself raised the possibility of child sexual abuse based on what she had heard, and had not been consulted by Mr. MacPherson about the Intake. Mr. MacPherson later told the County Court that the request to interview the child was not followed up because it was not called for at that point in time.

> "I refuse everyday of the week on that basis. If I don't feel it falls within the mandate of what I see as my mandate, I don't have the latitude to just arbitrarily send people out to do things such as that," and later,
> "I don't do that on the whim of a parent, come and talk to my child."

His response ignored the fact an experienced worker had raised the possibility there could be abuse.

In May 1987, Mrs. X returned to the agency and spoke again with the Intake Worker, Ms. Lang. Mrs. X told her no one had come to see her after her request for help two months earlier. This came as a surprise to Ms. Lang who had expected a home visit to Mrs. X would have been made. She was upset to find no action had been taken. Mrs. X could still not understand her older son's refusal to have visits with his father, and when he did go because he felt pressured to do so by his father, he would return from the visit in a "highly emotional, aggressive state." Ms. Lang conducted a lengthy interview with Mrs. X and learned she was to attend a Court Hearing at which her husband was seeking weekend visits for both his sons. Ms. Lang made three helpful and appropriate suggestions to Mrs. X and urged her to "try to get at the truth of what is upsetting her son so much." The recording of the interview was thorough, and the advice given Mrs. X was specific and helpful.

The Intake information went to Mr. Jim Chisholm as the assigned worker. In County Court in 1989 he described his home visit for a half hour with Mrs. X and the children. He found her concerns too vague to act on, and assured her the children's behaviour was not uncommon and that she should continue to explain to the boys it was good to visit with their father. Mr. Chisholm said he would keep in touch and would contact two counsellors she had been seeing from Family Services of

Eastern Nova Scotia, Ilona MacKenzie in New Waterford, and Sister Rose MacNeil who had given a parenting course that Mrs. X attended.

Mr. Chisholm made another half hour visit with Mrs. X in June and found her concerns still too vague to pursue. He later told the County Court in 1989 that the boy's description to his mother of the game played with him by his father was,

> "... just a kind of a game, a kind of horseplay among mares."

He tried to assure Mrs. X that some of her fears could be irrational, and that concerns she had of events that may have occurred several years back did not make sense to him and could have been due to disagreements between the parents. When asked if he noted Mrs. X's reaction to his advice, he stated in County Court:

> "Well, I think she accepted it, but she didn't accept it graciously if you like."

In terms of good professional practice, a half hour visit was not long enough to carefully listen to Mrs. X and document the concerns as expressed to her by her sons. Very young children are not always able to articulate their worries in a straight-forward way and Mrs. X herself found it difficult to relay them. Furthermore, to describe a game that the son did not like as just "a kind of horseplay among mares" shows a regrettable lack of sensitivity and professional judgment to an activity that was causing the older son considerable anxiety.

In preparation for a court hearing to vary access, Judge Darryl Wilson requested Sister Rose MacNeil of Family Services of Eastern Nova Scotia to do an assessment of Mrs. X, Mr. X and the children. This request was followed up by a formal letter of request from the lawyer for Mr. X, Mr. Robert Crosby. Before these assessments could be

completed Sister Rose MacNeil was called out of town. Nonetheless she had interviewed both parents and heard some beginning concerns about possible sexual abuse from Mrs. X. When questioned by Sister Rose MacNeil, Mr. X denied any inappropriate behaviour toward his sons. Sister Rose MacNeil also phoned two counsellors at Family Services of Eastern Nova Scotia who had known one or both parents. Ilona MacKenzie and Ray Musgrave felt the allegation of sexual abuse was unlikely. Sister Rose MacNeil however, felt there were legitimate concerns and had no reason to believe Mrs. X was not telling the truth.

In early June, Mr. X was interviewed at the Children's Aid Society office and denied any kind of inappropriate sexual behaviour of his sons. His main concern was over visitation with his children and said he would like to have the matter straightened out in court.

Mrs. X continued to be very worried about overnight visits of her sons with her ex-husband and called the Cape Breton Mental Health Clinic to see whether she might be able to have the children assessed by them. However Dr. Blood explained it was the role of the Children's Aid Society of Cape Breton to become involved with disclosures, not the Mental Health Clinic. In mid-June, Mrs. X and her sister came to the office and were seen for an hour by Mr. MacPherson and Mr. Chisholm. Mrs. X was expressing concerns that her older son had told her of the game he and his brother had to play with his father. Both workers still felt that they could not get sufficient information to justify interviewing the children, nor using anatomical dolls to assist in an assessment as Mrs. X had requested. They urged Mrs. X to continue allowing her husband to take the children on visits and to follow the court order which allowed him to do so. Mrs. X told the interviewer that Mr. MacPherson told her that if it was his own son, he would see that the youngster was made to go on the visits. This advice did nothing to address the help Mrs. X was seeking from the agency. She was prepared to stop visits of the children with her husband out of concern for the safety of the two boys and to explain her reason for doing so at

the next Court hearing concerning the request by Mr. X to vary the access order.

Becoming more and more desperate to have a professional understand her worries and confirm her suspicions, Mrs. X made an audiotape in which she attempted to have her older son repeat what he had previously confided in her. The tape was filled with leading questions and the son was clearly very uncomfortable with the conversation being tape recorded. The son described the father's actions in a game that made him cry and spoke about other incidents in which he was disciplined by his father. In the opinion of the Reviewer, an interview of the child was justified because of what he said on this tape and on other previous occasions. Mr. Chisholm told the County Court that he did not interview Mr. X after hearing the child's statements on the audiotape nor did he discuss the contents of tape with the mother. Mr. MacPherson believed the audiotape had exposed the older boy unnecessarily to sexual abuse and that it contaminated future concerns he expressed. In County Court, Dr. Blood disagreed:

> "The fact that the tape was made and the way it was made in terms of contaminating, the tape didn't show any evidence of trying to get the child to say something. There were a lot of questions. It was more like a cross examination, tell me this, tell me that, tell me this. But there wasn't anything on the tape where the things that were described were suggested, so I can't say that it contaminated anything that the boy would say in future."

At this point Mr. MacPherson and Mr. Chisholm felt the matter should be brought to the Family Court by the Children's Aid Society of Cape Breton under a Notice to Bring section of the Children's Services Act. The agency lawyer Mr. Robert Crosby, who had acted for Mr. X

in his divorce and in the access hearing, was replaced by Mr. Charles Keliher because of the conflict of interest situation. By giving the matter over to another lawyer in the same firm however, there was or appeared to be a continuing conflict of interest situation. Mr. X frequently visited the agency and felt his concerns were always listened to by either Mr. Chisholm or Mr. MacPherson. He was finding it increasingly difficult to arrange visits with his sons and would express his frustration to Mrs. X. Differences between himself and Mrs. X led Mr. MacPherson to have concern that the children might eventually be adversely affected by the conflict. The access hearing that had been held in May was adjourned, and the matter subsequently handled in the Family Court hearings under the Children's Services Act.

No service was provided to the children as Mr. Chisholm stated to County Court he had no concerns about them and found no basis to interview them for possible sexual abuse. Yet Mr. MacPherson in his testimony to the County Court explained the purpose he saw in serving a Notice to Bring. He explained it as part of an investigative process to facilitate the protection of children where one felt that children were being hurt. From this process, a set of rules for all parties could be set up, psychological tests could be ordered and other specific orders made that would prevent the children from coming into care. This rationale is often behind the use of a Notice to Bring. However in this instance, Mr. Chisholm had stated he had no concerns for the well-being of the children. The purpose it would seem was to bring some resolution to a problem the two staff were having in how to deal with what they saw as vague concerns of Mrs. X for her two sons. As well they stated they did not wish to see the children adversely affected in future by any conflict between the parents over access.

The Reviewer noted that Mr. Chisholm and Mr. MacPherson heard only vague concerns from Mrs. X, whereas the agency's experienced Intake Worker Ms. Lang had heard specific enough information that she had raised the possibility of sexual abuse with Mrs. X some four months earlier. It was stated to the Reviewer that after referrals were written

up by the Intake Worker, they were given to Mr. MacPherson for a decision on whether there would be any action taken. There was usually no discussion with the Intake Worker in making those decisions. Such a lack of communication by Mr. MacPherson did not ensure the full extent of the information was thoroughly reviewed before a decision was taken not to follow up a referral.

The Reviewer also noted that Ms. Lang did not know of previous agency contacts when she first interviewed Mrs. X, one report of which contained an opinion from Mr. Ray Musgrave, counsellor at Family Services of Eastern Nova Scotia. He had told the Intake Worker, Ms. Kelloway, that Mrs. X was domineering and controlling and that it was obvious to him she was trying to get rid of her husband. This view was later reflected by Mr. Chisholm in his explanation of the situation to the RCMP and inferred in a letter to the Child Abuse Registry. The result was that Mr. Chisholm and Mr. MacPherson could not genuinely listen to Mrs. X nor hear the concerns of the boys. Rather they wished psychiatric and psychological assessments of the parents as well as counselling to assist the parents in coming to some agreement on access. As events would prove, this direction in case planning could not realistically lead to a resolution as long as Mr. Chisholm and Mr. MacPherson refused to consider the possibility of sexual abuse and handling that matter first.

July 18, 1987 to September 18, 1987 - Notice to Bring Hearings

Both parents felt relief that the matter was going to come before the Family Court. Mr. X hoped it would clarify his access expectations and Mrs. X felt that at last some kind of investigation would be done that would include an interview with her children. Mr. Chisholm and Mr. MacPherson hoped that psychiatric and psychological assessments of the family would help determine the issue of visitation and whether anything negative was happening to the children as a result of the access difficulties. The Court ordered these assessments to be done by

the Cape Breton Mental Health Clinic, and Dr. Blood, psychologist, was to render his report on the two parents and the older son at the September Family Court Hearing. In the meantime, Mr. X was given a weekly access visit with his children during which he could take them to his home.

On July 30th, Mr. Chisholm wrote the Cape Breton Mental Health Clinic a letter explaining the reason for the Court referral. It was made clear that the agency had no concerns about the possible sexual abuse of the boys. Rather they were becoming concerned about the children possibly suffering as a result of the disagreement between the parents. When the Reviewer asked Mr. Chisholm how this disagreement was being expressed in front of the children and the effect on the children, he was unable to clarify the statement. In his letter of July 30th to Dr. Blood, he wrote:

> "... the problem here is long-standing and as time passes, becomes more and more intensified and more damaging to the children. Whatever assessments and direction can be offered to our Agency in this matter will be appreciated."

This statement about the emotional well-being of the children is in direct conflict with Mr. Chisholm's own evidence in County Court, that he had had no concerns about the boy's behaviour and that he did not believe they were being sexually abused. The boys were not at home on his subsequent visits for him to observe their behaviour.

In late July Mrs. X became very upset when her older son revealed specific inappropriate activity had occurred on a recent visit with his father and that it had also involved the younger brother. She outlined very clearly those concerns to the RCMP on August 3, 1987 and asked whether they would investigate as the Children's Aid Society had refused to do so in spite of her previous requests. RCMP Constable

Martell called the Children's Aid Society and made notes of Mr. Chisholm's assessment of the situation:

> ".. Mrs. X may be the biggest problem in this case. Apparently she will stop at nothing to gain complete custody of her children. --- Chisholm felt that going to the police is just another step by [Mrs. X] to fight her ex-husband for custody."

At this point the RCMP did not proceed any further as Mr. Chisholm told the RCMP that Dr. Blood would be assessing the family members at the Cape Breton Mental Health Clinic. Furthermore Mr. Chisholm told Constable Martell that the agency was considering taking the children from Mrs. X until the matter was finally concluded.

On August 6th Dr. Blood interviewed the older son as part of his assessment of the family. In the course of this, the five-year old boy disclosed to the psychologist that because of games he had to play with his father he did not wish to visit with him. The youngster used anatomical dolls after his disclosure to illustrate the game he had to play with his father. Dr. Blood reported this to Mrs. X as well to the agency and urged the agency to treat the child's allegation seriously and conduct a thorough investigation. Ms. Sandra MacNeil and Mr. Chisholm came to the Clinic to view the videotape but neither discussed the disclosure with Dr. Blood at the time. Mr. Chisholm questioned Mr. X in his office about possible child molestation. He reported that Mr. X was very upset at hearing this because he felt that his visits with the children had been going well. Mrs. X contacted the RCMP the same day and advised them of what her son had just shared with Dr. Blood. The RCMP called Dr. Blood and hearing his opinion, prepared a search warrant. Four days after the disclosure they searched the home of Mr. X who fully co-operated with the RCMP. No physical evidence was found that might have related to incidents mentioned by the boys and no criminal charge was laid. Corporal MacQueen was unaware at the

time that there was a videotape of the youngster's disclosure. From his contacts with both parents, Corporal MacQueen noted in County Court that he personally found Mr. X more credible than Mrs. X. He felt Mrs. X was quite emotional and very adamant in her view of tha facts as she saw them, whereas Mr. X readily admitted he had made some mistakes with the children but denied the allegation.

Corporal MacQueen confirmed with the Reviewer that at no time did Mr. Chisholm or Mr. MacPherson initiate a call to the RCMP requesting this investigation. Yet at the County Court Hearing in 1989, Mr. Jim Chisholm testified:

> "My next contact was August 10th, and at that time I spoke to the RCMP to inform them of the further developments in this case, in this matter. ---- I told them about the tape that Dr. Blood, or the interview, the taped interview that Dr. Blood had made, and what his conclusions were and what our reaction was to that, ie., that we were treating it now as a possible fondling, sexual molestation, and asked them to conduct an investigation as to the laying of charges."

Mr. Chisholm further stated to the County Court that he again called the RCMP the next day and spoke with either Corporal Martell or Constable MacQueen to give them more facts of the matter. Mr. Chisholm said he advised them that Dr. Blood had the tape which Mr. Chisholm believed they were requesting to see.

Constable MacQueen confirmed with the Reviewer that these two calls were never initiated or received from Mr. Chisholm, either on those dates or any other. Complete RCMP records in this matter were tendered in County Court and show no such calls. The testimony of

Mr. Chisholm would appear to be totally incorrect. They also convey that both a new assessment of the problem and a request for an investigation were made by the agency when in fact, Mr. Chisholm had never relayed the details of possible sexual abuse according to RCMP records. His comments in any conversations he had with the RCMP related to the fact Mrs. X was coaching the children and using the allegations for her own purpose in an access dispute.

In Mr. Chisholm's report of the matter to the Child Abuse Registry, he writes that the RCMP were contacted and they conducted an investigation, again inferring the agency had initiated the action. There was no mention in his letter that he or Mr. MacPherson had ever considered treating the disclosure as possible sexual abuse, nor was that position put forward by him at the Family Court Hearing of September 18, 1987.

In the opinion of the Reviewer, the details given to Mrs. X by her son well before July 17th when the first Family Court hearing was held under the Children's Services Act, were sufficiently clear to have alerted Mr. Chisholm and Mr. MacPherson to the possibility of sexual abuse. The knowledgeable protection worker who is aware of the indicators of abuse, would have done an assessment.

In this case, Mr. Chisholm and Mr. MacPherson took no action on to protect the children or to request a criminal investigation. Instead Mr. Chisholm maintained in his conversation with Constable Martell, that Mrs. X was coaching her children in an effort to fight her ex-husband for custody. The Reviewer was unable to find any evidence to indicate she was doing this. In his Discovery Examination Mr. X stated he did not believe his ex-wife would ever coach the children to say things about him. Mrs. X had consistently told Ms. Lang and Mr. Chisholm that she wanted her sons to have a good relationship with their father and as late as the last Family Court Hearing before Wardship in 1988, asked that the children have supervised visits until they felt comfortable being with their father. Added to this, there

were indicators in the videotaped disclosure that would support the view the older son had not been coached. Mr. MacPherson chose not to see the videotape and Mr. Chisholm's viewing of it was such that he indicated to the Court he had intended to look at it a second time but had not done so.

Given that Mr. Chisholm and Mr. MacPherson decided they did not have sufficient details to lead them to consider possible sexual abuse and to interview the children, they most certainly should have considered the possibility of sexual abuse when the older boy disclosed to the psychologist, Dr. Blood. Taking steps to gather more information and ensure the safety of the children from possible continuing abuse was clearly the responsibility of Mr. Chisholm and Mr. MacPherson. By not doing so, they left the children at possible risk. It also illustrated their inflexibility about an opinion they had made earlier and showed the interests of the childen were not being kept paramount.

A consultant's report to County Court from Mr. Ross Dawson who was engaged by Mr. X, spelled out the specific steps that could have been taken at this time to complete such an investigation after the disclosure. They included medical examinations of the children, a specialized assessment of Mr. X with his consent, and a request to Dr. Blood to seek further information from the boy during his therapeutic sessions rather than have a child protection worker do that apart from the therapy session. Mr. Ross Dawson is a social worker in child welfare who is Director of Training for the Institute for the Prevention of Child Abuse, Toronto, Ontario.

A Consultant engaged by the County Court, Dr. Marliess Sudermann, commented in her summary and recommendations:

> "In considering [the boys'] welfare over the past three years, it must be said that most of the disruption in their lives could have been

> avoided if the Children's Aid Society of Cape Breton had undergone a thorough, competent, timely investigation of the child sexual abuse allegations made by [Mrs. X] in the first six months of 1987. Furthermore, if [the older son's] disclosures to Dr. Blood had been treated seriously, as they should have been, again, the interests of the boys would have been much better served."

Dr. Sudermann is a psychologist on the staff of the London Family Court Clinic, London, Ontario.

In the opinion of the Reviewer, the inability and/or unwillingness of Mr. Chisholm and Mr. MacPherson to consider child sexual abuse became a major road block to the resolution of the access problem. In their opinion, the roadblock was the "adamancy" of Mrs. X in pushing for an investigation to suit her own purposes. Their assessment of this allegation was very inadequate and biased. Regrettably this significant error in judgment showed more concern on the part of Mr. Chisholm and Mr. MacPherson to maintain their opinion that this was a false allegation by Mrs. X, than to the steps to act on the concerns of the children.

The Reviewer wishes to make clear that any properly conducted joint investigation of an allegation of child sexual abuse by the RCMP and a Children's Aid Society does not necessarily result in evidence to lay criminal charges. It could have found no abuse had occurred, or that abuse had occurred, or that the allegations were indeed false and deliberately made up. The results of such an investigation had it been conducted will remain unknown because a thorough and co-ordinated investigation was not done by the agency.

The Reviewer also wishes to note that Family Court proceedings are completely independent from Criminal Court. It is possible that

even though there is not enough evidence beyond a reasonable doubt for police to lay a charge against an alleged offender, the protection worker can still bring the matter to Family Court if there are reasonable and probably grounds to believe a child is at risk.

In early August 1987 and just prior to the older child's disclosure to Dr. Blood, Mrs. X became very upset and disheartened at the attitude of Mr. Chisholm. She made a request to the Department of Community Services in Halifax and Mr. Sandy Bowes Executive Director of the agency, that she be granted a change in social worker. This request was approved by Mr. Bowes to overcome her lack of confidence in Mr. Chisholm's competence. Mr. Chisholm told the County Court that he attended a case conference with the supervisor Mrs. Hildegarde O'Neil, who was in charge during an absence of Mr. MacPherson, and a protection worker Ms. Sandra MacNeil. It was thought a female worker could better encourage Mrs. X to work along with the agency. Ms. MacNeil was assigned to visit Mrs. X. She reported to Ms. Hildegarde O'Neill that the incidents related to Mrs. X by her son seemed to have validity. The next day Ms. MacNeil viewed the videotaped disclosure by the older boy in its entirety and felt the child should be interviewed. However Mr. MacPherson on his return disagreed this should be done even though he had not seen the videotape. He stated the real issue was a custody matter in which Mrs. X wished to stop Mr. X from having visits with his children. He also decided Mr. Chisholm would remain as the worker for Mrs. X.

In spite of Mr. Bowes' decision to make a change in social workers, Mr. MacPherson reversed the Executive Director's position on the request. As Mr. MacPherson told the County Court in September 1989:

> "I wanted to know why there had been a change. I was not satisfied with their reasons that I was given for the change, and Mr. Chisholm got the file back very quickly."

The extent of personal control exercised by Mr. MacPherson on the Executive Director as well as over policies and casework decisions was a major concern raised with the Reviewer by Mrs. X, a number of professionals both within and without the agency and by members of the public. This decision failed to recognize a professional responsibility to make such a change when a client's complete lack of confidence in the worker has occurred in such a complex matter and when the worker was also aware of the very poor working relationship.

Family Court Hearing - September 1987

The second Family Court Hearing was held on September 18, 1987. Dr. Blood's written assessment of Mr. X, Mrs. X and their sons was tendered to the Court but Dr. Blood was not called as a witness. A lengthy written assessment report was prepared on each parent. The older boy appeared somewhat anxious. The younger boy had no difficulties and was seen only once by Dr. Blood.

The recommendations of Dr. Blood were accepted by the agency. However the psychologist's recommendation that the child's allegations to be taken seriously and a thorough investigation be done was not undertaken. Mr. MacPherson told the Court that bringing the matter before the Court itself showed the agency had considered the matter seriously and that he saw that process as constituting an investigation that would get to the facts.

At that hearing Mr. MacPherson requested psychiatric examinations of Mr. X and Mrs. X be ordered by the Court in order to know "the depth of pathology" which Mr. MacPherson felt was indicated on both sides. (This request was subsequently made to the Cape Breton Mental Health Clinic, and the psychiatrist Dr. O'Brien responded that he could add nothing to the thorough assessment done by Dr. Blood.) Mr. MacPherson saw the older son as suffering in the middle of an access dispute caused by an allegation of sexual abuse that

had no basis. He still felt the allegation was a means by which Mrs. X was attempting to stop all access visits of the children with their father. In Dr. Blood's assessment results of his interview with the older boy, it was evident the lad felt close to his mother and that she had encouraged him to talk to the psychologist. The youngster denied that his mother had helped him remember what to tell. He said he did not want to visit with his father because he did not like him. His anxiety that was noted in the interview could have been attributed to the situation of being alone with a therapist or to the nervousness usually seen in children who are disclosing they have been abused. The fact that Mr. MacPherson described this five year old who had been somewhat anxious in a disclosure interview as "suffering" from a custody dispute, seems to mark a shift in focus for the agency. From this point forward the children's behaviour was seen by Mr. Chisholm and Mr. MacPherson as solely emanating from an unresolved dispute between the parents caused by what they considered to be false allegations by Mrs. X.

The Court was told that visits by Mr. X with his children were stopped by Mrs. X shortly before the son's disclosure to Dr. Blood and that Mr. Chisholm received Mr. X's co-operation in not seeing his sons until the hearing.

Mr. X told the Family Court of his unhappiness over access problems:

> "I've never hurt my children in all my life, and never will ..... As far as I'm concerned this is just a blown up allegation so that I am cut out of the picture of seeing my children and being close to my children, so this one person can rule the roost and make all decisions, whatever."

Mr. X assured the Court he would comply with whatever was asked of him to resolve the matter including doing anything that would help allay his ex-wife's concerns. With this degree of co-operation the Reviewer is of the belief that if Mr. Chisholm and Mr. MacPherson's casework practice had not been so heavily biased, supervised visits could have been mediated with both parents without having had to bring the matter to Family Court. In this way the fears of Mrs. X could have been lessened considerably. The Reviewer also noted a reluctance on the part of the agency to take this route as they were concerned it might infer Mr. X was guilty of sexual abuse. On the contrary Mr. X was willing to have supervised visits and taking this course of action would have shown that the agency as well had the children's best interests in the forefront.

At this September hearing Mr. Charles Keliher representing the Children's Aid Society of Cape Breton said in his summation,

> "the Children's Aid Society could not resolve the matter as between the parties. Now we've presented you with the evidence as we best know it and leave the matter in your good judgment."

At this hearing the agency made no recommendation about the nature of access visits. The Judge determined that Mr. X could have weekly visits supervised by one of his relatives. He ordered that Mr. X and Mrs. X each be examined by a psychiatrist as requested by Mr. MacPherson and that the older son continue seeing Dr. Blood at the Cape Breton Mental Health Centre. In addition Mrs. X was ordered to undergo psychotherapy at Family Services of Eastern Nova Scotia as well as receiving assistance to strengthen her parenting skills. Mrs. X had just completed the Systematic Training in Effective Parenting (STEP) Course given that spring by Sister Rose MacNeil of Family Services of Eastern Nova Scotia. The reasons are not clear to the Reviewer why Mr. X was not ordered to do the same as his parenting

skills were also seen as equally problematic at times, and counselling for him had also been recommended by Dr. Blood in his report to the Family Court.

The hearing was adjourned for two months.

Family Court Hearing - November 27, 1987

A written report from Dr. Blood to Mr. Chisholm indicated that the older son was now much less anxious since supervised visits with his father were begun. He was still voicing reluctance to contact his father and expressed fears his father might hurt him. He recanted his statement that unwanted sexual play had gone on between him and his father adding that he had been told by his father not to tell things to Dr. Blood. Dr. Blood stated in his report that he felt it unlikely the boy had made up the story.

Mr. X and his relative who supervised the visits stated the visits were going well. Mrs. X however reported that her older son was expressing concern for his younger brother. She had found the younger boy crying every night for a week. He finally told his mother what had happened. Mrs. X would not state to the Family Court the nature of those specific concerns because she felt that by doing so in front of Mr. X she would be putting the children in danger. The Hearing was adjourned to February 26, 1988 with Mr. X having continued supervised access visits with his sons and with increased frequency of contact. Mr. X was ordered to have counselling sessions at Family Services of Eastern Nova Scotia to help with his parenting skills.

Family Court Hearing - February 16, 1988

Prior to this Hearing Dr. Blood sent an updated report to Mr. Chisholm . He stated he did not anticipate any further sessions with the older boy as he was making such strides in confidence and

independence and had little anxiety. The youngster was continuing to voice negative feelings towards his father. It was Dr. Blood's opinion that the son would not wish to have visits if he were given the choice.

Dr. Blood interviewed Mrs. X and the younger son. He found the lad more anxious than when he had seen him five months earlier. Dr. Blood did not attempt to obtain a disclosure because of the child's age (3 1/2 years), and because he felt such a disclosure would not hold up in criminal court proceedings. Mrs. X told Dr. Blood what the concerns were that had been shared with her by the younger son and which she felt she could not give at the previous Court Hearing. Dr. Blood was becoming ambivalent about the cause of the child's anxiety, feeling it could be from possible sexual abuse or from pressure from Mrs. X who might be wishing to deny access. Dr. Blood was called to the February Family Court Hearing as a witness.

He explained that he felt Mrs. X would not feel comfortable until she was assured that nothing was happening and that in his opinion that was the crux of the problem.

> "I think the problems are strictly around the abuse. And if it was clear on what was happening with that, I wouldn't have concerns that she would be inappropriate as a parent."

Mrs. X told the Family Court of further disclosures made by both sons about incidents with their father that led her to believe they were being sexually abused. Some of these incidents had occurred while they were on a supervised visit. Mr. MacPherson and Mr. Chisholm had checked these incidents out by visiting the home of the relative where the visit had taken place. There were only two very brief times during which the relative was not present during visits. Mr. Chisholm and Mr. MacPherson agreed that the incidents could not possibly have taken place at those times given the nature of the child's description to his

mother. Furthermore they were concerned that Mrs. X had shown very poor judgment with the boys in how she had handled their information at the time they disclosed to her. She had also denied access visits to her ex-husband. By the time of the hearing he had not seen the children for over a month in spite of the Court order allowing him visits.

On February 18, 1988 Mrs. X took the details of the children's latest allegations to the RCMP as the Children's Aid Society had not acted upon her concerns. Corporal Burrell phoned Mr. Chisholm and learned from him that the agency had done a complete investigation and the whole matter would be coming up at the next Family Court Hearing on February 22, 1988. In his notes of that call, Corporal Burrell stated:

> "Contacted Jim Chisholm, Family Services 562-5506. This matter has been fully investigated by their department and as far as they are concerned, it is unfounded. Further to this, since January 1987, [Mrs. X] has filed complaints of sexual abuse against her ex-husband with the Department of the Attorney General, her MLA and the Director of Social Services and all complaints have been investigation and been found to be unfounded. The visits between the ex-husband and the kids are chaperoned because she made such a fuss .... Social Services is going to bring out her whole file and attempt to show she is suffering from a neurosis and unfit to have the children."

No further action was taken by the RCMP as it was the understanding that the Children's Aid Society of Cape Breton had the matter in hand. The Reviewer notes that Mr. Chisholm did not view the

supervised visits as a protection to the children but rather as a response to Mrs. X who had "made such a fuss." It would appear as well that Mr. Chisholm's goal in casework was to prove Mrs. X mentally unfit to care for her children.

Sister Rose MacNeil who was providing the counselling to Mrs. X as ordered by the Court testified at the Hearing that although the mandate of her counselling was not to focus on the concerns of Mrs. X about possible sexual abuse, Mrs. X sometimes raised those fears. Sister Rose MacNeil pointed out that she never had reason to question the veracity of her statements nor did she believe Mrs. X had fabricated stories. She based this opinion on the fact that Mrs. X was always very open and up-front and "so starkly honest about herself." She felt Mrs. X had an understanding of normal childhood sexuality, and that she was able to identify behaviour that was not normal. Sister Rose MacNeil also told the Court that there was a lot of over-reacting to Mrs. X because of the person and what Mrs. X had been trying to do for the children.

Sister Rose MacNeil stated that Mr. X's therapist Jim MacNeil of Family Services of Eastern Nova Scotia had approached her about the possibility of Mrs. X going on the visits with the children since the mother had stopped visits of Mr. X following new concerns from the children. Mr. X told the Reviewer this idea had come to him in order to find a solution to the visiting problems. Mrs. X agreed to do that as did Mr. X. However Mr. X later changed his mind stating that this would reflect negatively on the integrity of his relative. The Reviewer notes that Mr. Jim MacNeil counsellor for Mr. X was not summonsed as a witness to testify about the content of sessions with Mr. X, nor what led Mr. X to change his mind about Mrs. X being present during visits of the children with him.

Mr. MacPherson testified at this Hearing that he and Mr. Chisholm had visited the home of Mr. X's relative to check out the concerns of Mrs. X that possible abuse had occurred during a visit. As

stated earlier in this report they found no substantiation for the allegations. Mr. MacPherson also stated that he and Mr. Chisholm and Dr. Blood had held a meeting to discuss possible options for supervised visits that would assure Mrs. X the children were safe. Mr. MacPherson stated there were no other options than videotaping all visits. When those visits stopped, he was uncertain what then would happen. It is unclear to the Reviewer why supervised visits by others than relatives of Mr. X were not considered.

Although the lawyer for Mrs. X Mr. Gerard MacKenzie requested the Judge to consider no access to the father, he presented the alternative of Mrs. X accompanying the children on the visits as had been earlier suggested to Sister Rose MacNeil by Mr. Jim MacNeil. However the Children's Aid Society opposed the suggestion as being "detrimental and dangerous to the children."

Judge Darryl Wilson adjourned the hearing to May 27, 1988 with Mr. X having supervised visits as frequently as had been ordered before. The lawyer for the Society Mr. Keliher warned that if the parents did not agree on access the agency might come to the next Hearing under Section 47 of the Children's Services Act. This section of the Act is used when children have been taken into the temporary care and custody of the child welfare agency.

In testimony later to the County Court Mr. Chisholm stated that besides visiting the home of relatives he had checked with Dr. Schneiderman to whom Mrs. X had taken her younger son. From both the home visit and his discussion with the doctor he was convinced there was no sexual abuse. He also told the County Court that he phoned the RCMP to report the new concerns from Mrs. X so that they could decide whether to investigate or not. The RCMP file clearly shows that the report of possible abuse incidents came from Mrs. X not Mr. Chisholm and that it was the RCMP who had called him for information.

In the time from the November 17th, 1987 Hearing to the next one on February 22nd, 1988 there appears to have been little service offered by Mr. Chisholm to Mrs. X and the children. Mr. X told the Reviewer he frequently went to the agency office after shift work and would always be seen by Mr. MacPherson, Mr. Bowes, Mr. Chisholm or Ms. Hildegarde O'Neill. He felt very frustrated and angry that his wife was denying access visits in spite of the Court ordering them and wondered how things would ever get worked out. He felt the agency was very supportive of him and that he had full confidence in the way in which they handled the matter.

March 22, 1988 - Apprehension of the Children

At noon on March 22, 1988 just after the children finished their lunch Mr. Chisholm and protection worker John Janega appeared at the home of Mrs. X and apprehended the two children under a Section of the Children's Services Act, alleging that the two boys were in need of protection on the grounds that they were children "in the care or custody of a person who is unfit, unable or unwilling to exercise proper care over the child[ren]." (Section 2 (m)(iii) of the Children's Services Act.) As Mrs. X told the County Court:

> "... two men came to the door, Jim Chisholm and another man I didn't know. I went to the door and let them in. I thought they wanted to talk to me. [My sons] were in the room watching television. They sat at the table and Jim Chisholm began saying that they wanted to take my children and they wanted me to be the one to do it. I started to cry and I couldn't believe that they were doing this. I said to them, the only security they ever had. ----- [John Janega] was trying to encourage me to co-operate and that it was in

the best interest where we were back and forth to court and getting nowhere. Jim Chisholm asked me to go in and tell the children that it is like a vacation. It would only be until school finished. Anyway I cried a while and tried to get myself together. Finally I went in and went over to [my older son] and I told him I loved him, and I told him I wasn't doing this to him and not to forget it. And then I went over and I sat on the chair and I asked them to come over to me but Jim Chisholm sort of laid on the floor and sort of blocked [my older son]. He went into telling [my older son] that they were going to this house and they had a dog and a cat, had two kids there. [My younger son] just hung onto my leg, he was just hanging onto me. I left the room and I sort of got emotional. I went to the bathroom and tried to cry and Jim Chisholm was standing by the door. I came out and he asked me just to get their clothes so that they could go. I got their ski pants, and he said it is okay, you don't have to give them anything else, just a teddy bear or whatever they like to take with them. I went outside and buckled [my younger son] in the back and then [my older son] stood by the car and he said, "ma are you coming?", I said "No, - I can't go." He jumped out of the car, I went over and I took his hand and I told him you have to go. He turned around and he went back in.---- I couldn't watch the car leave. I had to go in and my whole life was gone."

This drastic action was carried out without any warning or preparation with the mother or with her two sons. Mr. Chisholm told the Reviewer one did not usually tell parents if the apprehension of their children was going to take place. Mr. Chisholm had not contacted her first to say a decision to apprehend had been made nor what the reasons were nor when he would be coming. Had this been done, it would at the very least have allowed Mrs. X an opportunity to prepare the boys for the separation and help deal with their feelings. Mrs. X told the Reviewer she bravely tried to co-operate so the boys would not become more upset at seeing her emotionally overcome by the situation.

Mrs. X did not know that after the previous Court Hearing a month earlier Dr. Blood, Sister Rose MacNeil and Jim MacNeil had met with Mr. MacPherson. That meeting resulted in agreement on two possible alternatives which were to deny the father access or to take the children into the care of the agency and have supervised visits for the parents with their children. This was another lost opportunity for the professionals involved to have met together with Mr. X and Mrs. X. Had this happened another outcome than apprehension might well have been found. As denying access to the father was seen by the agency as considering him guilty of sexual abuse, the only acceptable option to the agency was to take the children into the agency's temporary care and custody. Mr. X appeared to be supportive of the apprehension and did not express concern about the effect the separation would have on the children. Any relief felt by Mrs. X related to the fact that Mr. Chisholm told her during the apprehension the agency would now investigate whether sexual abuse was occurring. Mrs. X felt a burden lift from her shoulders that someone other than herself was now in charge of ensuring the safety of the children.

There was no evidence to suggest serious consideration was given to visits with Mr. X and his sons supervised by someone other than his relatives. There was no indication to suggest any in-depth consideration was given to the impact of the separation on the young children from their mother with whom they were very close. Dr.

Blood's letter gave no documented evidence the boys were suffering serious emotional problems. He did note that the younger boy still denied any sexual abuse had occurred and that he was having nightmares. The younger boy was apathetic and somewhat withdrawn. The psychologist saw the denial of abuse by the older boy as an attempt on his part to avoid the issue.

Dr. Blood had believed the agency had done a thorough investigation seven months earlier as he had recommended them to do after the younger boy's disclosure. On that assumption he had agreed with the agency that apprehension and removing the children seemed the best plan. There was no evidence to suggest the origin of the older boy's nightmares and the younger child's apathy. Again it was assumed by Mr. Chisholm and Mr. MacPherson that it stemmed from their mother's insistence on protecting them from abuse, a ploy they saw her using in order to deny access.

The book entitled Canadian Child Welfare Law clearly outlines the need to ensure apprehension is used only as a last resort.

> "From a permanency perspective, the decision as to whether or not to apprehend the child is very significant. Removal of children from their homes clearly interferes with their sense of continuity and stability and should only occur in serious situations. It can lead to a long period of separation of children from their parents if the court proceedings are prolonged."

At the County Court Hearing in September 1989, Mr. MacPherson was asked for his reasons for approving the apprehension.

> "There was marked deterioration, not only in [the older boy] at this later part before the apprehension but also in [the younger boy] was part of the turmoil and in turmoil. The

bottom line of that was, is that these children are suffering, something has to happen. The attitude that I perceived from [Mrs. X] in Family Court told me that this had to go to a higher level, to a much more serious level. The children, number one, had to be taken out of the circumstances so that they could be stabilized. And to see if the Court could bring to bear some understanding on what was happening in a much more formal way versus the Notice to Bring."

Mr. Jim Chisholm explained the need to apprehend as he saw it:

"It became clear that supervised visits as we had instituted them at that point through the Notice to Bring were not working. It was felt we should take the next step to apprehend in order that the agency would control the visits and as well remove the children from that stressful situation."

Yet in County Court, Mr. Chisholm said of Mrs. X,

"Well she was a fit parent. I mean her home was nice, she didn't abuse drugs, alcohol or anything like that; there were no concerns of parenting in that regard. Basically the parenting concern was that she was not sensitive to the fact of what she was putting the children through. She was not taking account of their emotions, of where they were at, as young children, in a situation of powerlessness, and in that regard there were

of course concerns about her judgment as a parent."

In the opinion of the Reviewer these reasons and the evidence upon which they were based did not justify the apprehension of the children from their mother. Moreover there was no reason to apprehend so suddenly as there was no immediate high risk to the children being with their mother. Furthermore the children could not understand the reason for their departure alone nor for the perceived willingness of their mother to let them be taken. This still remains a problem for the older son to fully understand.

In summary, this action appears to have been taken on grounds that were unsubstantiated yet reportedly done in the best interests of the children.

Family Court Hearing - April 5, 1988

This brief hearing confirmed with the Court that the apprehension of the two children had taken place and that proper Notices of Apprehension had been served on both parents.

Mr. Chisholm was the sole witness and gave a brief resume of the reasons for his apprehension of the boys based mainly on the report from Dr. Blood. The next Hearing was scheduled for May 20, 1988 with visiting of the children by each parent to be arranged by the agency. The children were to remain in the temporary care and custody of the agency.

In the agency files for the children brief summary recording by the children's social worker indicated the youngsters settled in well to the new foster home. The foster mother reported she observed no abnormal behaviour. She later told Dr. Blood that initially the older boy had nightmares which she attributed to the move from his home. The parents visited with the boys each week at the Cape Breton Mental

Health Clinic and the children enjoyed the visits. According to the foster parents the older son kept asking when he could return home. They noted that although both boys spoke more about their mother than their father, they enjoyed their visits with both parents. The firm and consistent discipline they were receiving in the home was evident in their calmer behaviour when they came to the Cape Breton Mental Health Clinic for their visits with their parents.

Family Court Hearing - May 20, 1988

At this hearing five witnesses were called by the agency to testify about their previous contacts with Mr. X or Mrs. X. Three witnesses had been counsellors to Mr. X, one briefly with Mrs. X and one with the children, Dr. Blood. He testified that he felt the children were being emotionally damaged because of the conflict between the parents. He was impressed at how much better the boys were doing in care. They appeared happy, well-behaved and displayed no signs of anxiety. Dr. Blood expressed the opinion that it showed both parents could benefit from having better controls and better discipline and parenting skills with the children. He still had concerns that the older son did not feel safe in unsupervised situations with his father.

Mr. MacPherson told the Court the children were apprehended because they were "suffering". Previous efforts to help the parents resolve their differences over access had failed and the children had to be removed from the middle. When asked about possible sexual abuse, he stated;

> "The issue of sexual abuse is a red herring to me here. I think it has become used as a form, a very typical form, to gain a certain end. The final analysis from my point of view was that both these parents were prepared to have their children hurt in this process. That's what upsets me more than anything.

The fact that the children have been upset, have been hurt, and had to be removed so they wouldn't hurt any longer."

Under cross-examination by Mr. Mike MacDonald lawyer for Mr. X Mr. MacPherson revealed the agency's plan was to seek permanent care and custody of the children. Mr. Chisholm in his testimony to the Family Court admitted he had never sat down with Mrs. X and asked her what her wishes were with respect to her husband seeing the children. He stated it had always been obvious to him in any conversation with her that her goal was to have access denied to her husband. As time did not permit other witnesses to appear the remainder of the Family Court hearing was adjourned to July 11, 1988.

The Reviewer found no justification in the available evidence for the apprehension of these two sons from their mother. Her genuine concern to do all in her power to protect them from the unwanted behaviour they described to her was an appropriate response for a concerned parent. To continue to attribute that motivation to a ploy on her part to permanently deny access to her husband in spite of evidence to the contrary was a grave error in professional judgment on the part of both Mr. Chisholm and Mr. MacPherson.

Family Court Hearing - July 11, 1988

At this Hearing witnesses who had not been heard at the May 20th Hearing presented their testimony. The Reviewer noted that the agency did not call Sister Rose MacNeil as a witness, a counsellor who knew Mrs. X well and who testified at the February 1988 Court Hearing. At that Hearing Sister Rose MacNeil had stated that she believed Mrs. X had not made up the allegations, that Mrs. X understood normal child development in terms of their sexuality and that there seemed to be a great deal of over-reacting and insinuations being made about Mrs. X. The Reviewer also noted that at no time were foster parents called as witnesses to speak to the children's behaviour and to give their

observations of the youngsters' relationship to their parents. Neither was the Child Care Worker for the boys, Ms. MacMillan asked to testify about her observations of the children's behaviour nor to verify the expressed wish of the older boy to return home. Introducing the wishes of the children was deemed by the agency's lawyer at one Hearing to be discretionary unless the children had reached the age of twelve.

Mr. X told the Court of the problems in the past he had in maintaining visits with his sons because Mrs. X was not co-operative in arranging the times for him to see the children. However since the boys went into foster care visits were being supervised at the Cape Breton Mental Health Clinic. Mr. X found those going very well and the boys were happy to see him. He could not give an answer when asked about the game his older son had reported nor why his son did not wish to visit with him in his home. Mr. X expressed the wish to have custody of the children and to have the agency assist him with making those plans.

Mrs. X reviewed for the Family Court her early concerns about her husband's physical discipline with the older boy, the supervision of the boys' visits with their father by Mr. X's mother when she was living and how smoothly those visits went, the increasing reluctance of the older son to visit his father at his house, the child's nervous state after coming home following those visits and the child's reporting a game he had to play with his father that he did not like. Mrs. X was asked about an incident in which she had gone to workers shortly after the apprehension to seek their forgiveness. Months before Mrs. X had become very angry at the professionals who had refused to consider the fears being expressed by her children and she had talked about the staff who had not listened to her. Being a very religious person she later felt the need to ask their forgiveness for her reaction. Her children were now in temporary care. She was expecting them back shortly since at the time of apprehension Mr. Chisholm had told her and the boys that they would be returned in the summer. Her asking

forgiveness of those professionals at whom she had been so upset was a wish to make a new start in the future working relationship with those staff. As she did not explain this at the time, this action on her part was viewed in a different way by the professionals. Mr. Chisholm later told the County Court he saw this as indicating guilt and that it was a means of her releasing that heavy load. Ms. Ilona MacKenzie was so concerned by it that she contacted the Children's Aid Society worried that Mrs. X was suicidal. The agency was reassured by Sister Rose MacNeil who explained the rationale for why Mrs. X was seeking to make amends.

Mrs. X told the Court she very much wished her sons to have a good father and that she had tried in every way to encourage them to visit with him and have a good time. She was not prepared however, to force them to go against their will. She like Mr. X was pleased to see how well the boys had been doing in foster care but noted her older boy kept asking her when he could come home. Her lawyer Mr. David Parsons pointed out to the Court that the boys were doing well because they felt secure and were having supervised visits. She wished to regain custody of them both and to have the visits with their father supervised until the boys regained a sense of security when they were alone with him. Mr. Parsons asked the Court to consider the children's return to her quickly. He had just heard a report before the Hearing that the two boys were going to be moved to a different foster home. Their first foster parents were reportedly moving out of the area and it seemed very timely to return the children to their mother rather than have them adjust to a new home. Mrs. X indicated she would co-operate with any provision of the court and would ensure the children received continued counselling were that needed. The lawyer for the agency Mr. Charles Keliher, rejected the idea.

> "Your Honour, I don't see the relevancy of it in the argument. Foster parents move all the time. If we have children in our care, if they're in one foster home and the foster

> parents move, they move to another foster home. I don't know what bearing it has on the arguments that are being made."

Mr. Keliher told the Court that the testimony of Mrs. X was given out of convenience to have her children returned to her. However if they were returned the children would soon find themselves in the same situation as they were when they came into care. He stated in his summation that the children

> "were emotionally abused and that is as much a form of child abuse as the physical abuse itself or another form of child neglect."

With respect to Mr. X's request to have custody of the children following a two months adjournment to make a suitable plan, Mr. Keliher suggested to him that he had put his plan together while on the stand and that it was still somewhat speculative. Mr. X. agreed that further planning would be needed on his part.

The three lawyers made their summations and the agency asked the Court to find the children in need of protection and to commit them to the permanent care and custody of the Children's Aid Society of Cape Breton.

Judge Darryl Wilson adjourned the matter for two days until July 13th, 1988 to give him time to consider whether to adjourn the Hearing for two months without making a finding or whether to adjourn the Hearing in order to make a decision.

Family Court Hearing - July 13, 1988

Judge Darryl Wilson made the decision to set the matter over for a final decision until August 19, 1988. In the meantime the two boys were to remain in the temporary care and custody of the Children's Aid Society of Cape Breton with access to the parents as previously ordered.

Oral Decision - August 19, 1988

Judge Darryl Wilson found both children to be in need of protection and at the same time committed them to the permanent care and custody of the Children's Aid Society of Cape Breton, under Section 2(m)(iv), which related to "a child whose life, health or emotional welfare is endangered", whereas the section used at the time of apprehension related to "a child in the care or custody of a person who is unfit, unable or unwilling to exercise proper care over the child." In his written decision of September 6, 1988 Judge Wilson reviewed the testimony given by all the witnesses. He was satisfied from their evidence that the children were in need of protection and that their emotional well-being had been adversely affected by the continuing conflict between their parents over visitation and parenting skills. He was also satisfied that if the children were returned to the same environment their emotional well-being would again suffer as the relationship between Mr. X and Mrs. X had not changed. He determined that the children were suffering and that the source of it came from the dispute between the parents.

In terms of the appropriate disposition to be made following that finding he noted that the Children's Aid Society of Cape Breton requested the children be committed to their care. The children by all accounts were getting better care while in the custody of the Children's Aid Society than when in the care of their mother. He then reviewed the request from Mr. X to have custody of the children but did not yet have a plan. The Judge could not agree with custody going to the

father in view of the older son's fear of being with him and Dr. Blood's recommendation that the relationship not be forced.

Another alternative he considered was the return of the children to their mother and denying access to their father. He pointed out this would have relieved the fears of Mrs. X and removed the conflict for the children. The Court still had concerns about the parenting skills of Mrs. X to be firm with the boys and her understanding of normal child development. Although those were matters that could be addressed with counselling it had not assisted her in the past. Mr. X intended to pursue his rights of access and wished custody of both his children. The Family Court might have been able to deny him access for a period of time but Judge Wilson wrote that the question of access and custody would have to be determined at some point in the future by another Court of competent jurisdiction. Judge Wilson was satisfied that if the children were in the care of Mrs. X during that period of time they would suffer more emotional harm. In conclusion Judge Wilson committed the children to the permanent care and custody of the Children's Aid Society of Cape Breton as being in their best interests.

During the entire course of handling the matter of the case of Mrs. X to August 1988 when the children were made Wards, the Reviewer notes the following:

(a) There was no apparent attempt on the part of her worker Mr. Chisholm to take the time to carefully obtain and document the nature of the fears expressed by the older son with respect to disciplinary measures by his father or games he had to play with his father that might account for his refusal to visit with him.

(b) At no time were the children observed by the worker in order for the agency to make their own assessment of possible emotional abuse and to determine whether the children's anxiety stemmed from physical and/or sexual

abuse or from the fact the parents could not find an agreed upon arrangement for visitation.

(c) No child welfare investigation was done by the agency when specific incidents were related to Mrs. X by her son that clearly indicated inappropriate sexual activity was occurring. Such an investigation would have ensured that reasonable and probable grounds to believe the child was at risk did not exist.

(d) No child welfare investigation was initiated even after a disclosure indicating sexual activity with an adult had occurred. The psychologist to whom the lad disclosed recommended the matter be taken seriously and that a thorough investigation be done. The psychologist assumed that action had been taken and based his later recommendation to apprehend on that assumption.

(e) Mr. Chisholm and Mr. MacPherson made a decision early in the matter that Mrs. X was coaching her older son to give false allegations so she could terminate access to Mr. X. There is no indication that either Mr. Chisholm or Mr. MacPherson pursued with Mrs. X the reasons behind that motivation if that is what they had determined was the problem. The Reviewer noted that Mr. X stated in his Discovery Examination before the County Court hearings began that he himself did not believe his ex-wife would ever coach the children to say things like that against him.

(f) The agency recommended the couple receive counselling following the Hearing in September 1987. The purpose and goals for the counselling that was to be provided by Family Services of Eastern Nova Scotia were very vague. The referral letter from Mr. Chisholm to the Cape Breton Mental Health Clinic indicated he was relying on them to

provide direction for the agency in the matter. In the opinion of the Reviewer this was a most unrealistic expectation and an abdication of the agency's role.

(g) The only goal known to the parents was to "get their act together". Mr. X willingly co-operated with all that was asked of him and had denied any sexual activity with his son. There was nothing more he could do. Mrs. X on the other hand was not seen by Mr. Chisholm to be co-operative because of her adamancy in believing her ex-husband might be sexually abusing the five year old son. It was a totally unrealistic expectation that a mother so concerned about the safety of her children should relinquish those fears without a full agency investigation being done first.

(h) Mr. Chisholm and Mr. MacPherson had no proof that Mrs. X was attempting to stop permanent access to Mr. X. They had proof she did that only if the visits were unsupervised or not closely supervised. She told the court she wished to boys to have a good relationship with their father and that supervised visits would help them regain a feeling of security with him.

(i) The justification for the belief by Mr. Chisholm and Mr. MacPherson that Mrs. X had an ulterior motive seems to the Reviewer to have been based on other information they received during the agency's initial contacts. In 1985 the Intake worker Ms. Kelloway took the suggestion of Mrs. X to call her former counsellor Mr. Ray Musgrave at Family Services of Eastern Nova Scotia in order to get further information on the couple. He told Ms. Kelloway that Mrs. X was rigid, domineering and controlling and that it was obvious to him she was trying to get rid of Mr. X. In Mr. Musgrave's recording which was forwarded to the agency

he also expressed his personal attitude that Mrs. X was "a very castrating female."

A second source of information that might have led Mr. Chisholm and Mr. MacPherson to attribute such a motivation to Mrs. X was from the views of Mr. X himself. His lawyer Mr. Robert Crosby had represented Mr. X during the divorce settlement as well as representing him at the hearing in 1987 to vary access in the divorce order. Mr. Crosby had sent Mrs. X a letter alleging that she was turning the children against Mr. X and that as a result the five year old was refusing to visit his father.

Mr. Crosby was also the lawyer who at the time represented the Children's Aid Society of Cape Breton in child welfare matters before the Family Court. In May 1987 the agency was made aware that Mr. Crosby was representing Mr. X in the access dispute when Mrs. X told Ms. Lang the Intake Worker. Some subsequent discussions between the agency staff and Mr. Crosby would have had to occur since Mr. Charles Keliher from the same firm as Mr. Crosby was engaged instead to represent the agency when the matter of Mrs. X came before the Family Court in July 1987. Mr. Crosby advised Mr. X to engage another lawyer to represent him in Family Court as there would have been a conflict of interest for Mr. Crosby at that point.

(j) As a result of the nature of the assessment of the situation done by Mr. Chisholm and Mr. MacPherson protection issues relating to the possibility of sexual abuse of the children were not addressed by a thorough investigation of the allegations. Had Mrs. X's fears been heard and had she been encouraged to report to the child welfare agency any new complaints from the children, she would not have found it necessary to seek assistance elsewhere. A point

had been reached where a proper investigation should have been undertaken in co-operation with the RCMP. Interviews with the children, medical examinations and questioning of Mr. X only by the RCMP would have been part of that. The agency should have asked the RCMP to view the videotape with them with Dr. Blood in attendance. RCMP reports indicate that Corporal MacQueen did not know until later that Dr. Blood's opinion about sexual abuse had been based on a videotaped disclosure by the child. There was no record on the RCMP file that Mr. Chisholm had notified them of the existence of the videotape in spite of Mr. Chisholm's statement in Court to the contrary.

(k) Shortly before the apprehension Dr. Blood reported that the children were showing considerable anxiety. The five year old boy told him he was having nightmares of drills coming through the wall. On the basis of these concerns together with Mr. Chisholm and Mr. MacPherson observing no progress in Mr. X or Mrs. X finding an agreement on access, the children were basically apprehended because of "emotional abuse" and a fear of further deterioration in their well-being.

However the foster parents who received the boys into their home when they were apprehended described them as displaying no abnormal behaviours. The five year old boy had two nightmares that left him fearful and trembling but those did not continue. This assessment by the foster parents does not fit the profile of children who have been so emotionally abused they had to be removed from their parent's care.

(l) The Reviewer is of the opinion there was insufficient evidence to justify the temporary removal of guardianship

of the children from Mrs. X. Furthermore it was done with no warning to Mrs. X and without any thought such action might have been shared with her in advance. To ask Mrs. X to do the explaining to her children displayed an incredible lack of sensitivity to the mother. Not only did it ignore the sudden impact the event was having on her but it was Mr. Chisholm's responsibility to tell the children what was happening and why. He did explain to the children himself as Mrs. X had found it too difficult. He told the children they were suddenly going to another home without their mother and for a holiday lasting several months. This made no sense to the five year old who tried to remain behind. Subsequent events showed other instances in which the children's feelings were overlooked as the attention of Mr. Chisholm and Mr. MacPherson remained focused on Mrs. X and her concerns.

(m) The Reviewer could find no evidence of any case planning for the children by Mr. Chisholm and Mr. MacPherson. None was presented to the Court which would have been very helpful to the Judge in making his final decision. When the children were apprehended the Family Court Hearings to deal with that action were held over two days. The first day of the hearing was held almost two months after the apprehension and the second day of the hearing was held four months after the apprehension. No plans for the future of the children were presented to the Judge before he made a decision on disposition. As a result the Judge was not in a position to compare what could be offered by the family, by relatives, or by the agency.

A case plan would also have helped the agency focus on the best interests of the children. It would have taken into account the children's expressed wishes, the importance of continuity in the child's care and the

possible implications of disrupting that continuity. Had that been done the agency would have been in a position to recommend an adjournment to give Mrs. X the opportunity of resuming the care of the children with access visits being supervised. Regrettably that did not happen until seventeen months later when an order for their return was made by County Court Judge G. S. MacDonald following a trial 'de novo'.

August 19, 1988 to December 1, 1988 - A New Plan

Mr. Chisholm and Mr. MacPherson were astonished that Judge Darryl Wilson granted the agency permanent Care and Custody of the children, in spite of the fact it was a request the agency had just made, and had long maintained they would undertake if the parents did not agree on access visits.

Immediately following that decision Mr. MacPherson met with Mr. M. MacDonald, lawyer for Mr. X, Mr. David Parsons, lawyer for Mrs. X and Mr. Robert Crosby the lawyer for the Children's Aid Society of Cape Breton who replaced Mr. Keliher who had moved out of the province. Mr. MacPherson began the meeting by telling the lawyers,

> "...I had a strategy for possibly returning these children to one or both parents ... I articulated that it is unfortunate that we have arrived where we have arrived, that wardship with two people, possibly from my view unnecessarily. We have two children in our care that have two parents out there that want them and that doesn't make a lot of sense."

He went on to explain to the lawyers that he was prepared to engage a neutral helping person to help Mr. X and Mrs. X. to

> "resolve some of the reasons why we have arrived at wardship, with the view to the children returning to one of the parents. .... The reason why I chose that plan, and the reason why I chose it in that timing of that plan was that I don't, I didn't think the motivation could be higher for these people to look at why they have arrived where they have arrived."

Mr. MacPherson told the County Court he next met with Mr. Jim MacNeil Family Services of Eastern Nova Scotia and counsellor for Mr. X, Dr. Blood and Ms. Paula Hines from the Cape Breton Mental Health Clinic, Mr. Chisholm and Ms. Agnes MacMillan who was the Child Care worker for the boys. The plan met with their approval. Ms. Fran Tessier of Family Services of Eastern Nova Scotia agreed to be the counsellor.

On August 30, 1988 Mr. MacPherson, Mr. Chisholm and Ms. Agnes MacMillan met with Mr. and Mrs. X together and presented the plan. The parents were pleased to have another opportunity to possibly have the children returned. Mr. MacPherson told County Court he took a very stern approach, and that if any difficulties arose he would call off the whole process. Mrs. X described to the County Court how she heard his expectations:

> "At that meeting he told us that if we work together and they were giving us a chance and they were going out on a limb to do it. But if there were any signs, the least little signs that we didn't make it, that it looked like that trust, or any doubt at all that we

> couldn't make it together, and he clapped his hands and he said, your children will be gone and that will be it. You will never see them unless when they get older they will walk in that door."

With this understanding Mr. and Mrs. X agreed to have eight sessions with Ms. Tessier and if progress was made, visits with their children would be resumed.

The Reviewer notes the lack of clarity in the goal of counselling. In an affidavit, Ms. MacMillan stated her understanding:

> "That as a result of the August 24th, 1988 meeting there was a plan detailed which involved [Mrs. X] and [Mr. X] attending in therapy sessions with Frances Tessier in an effort to resolve difficulties within the family with a goal of re-uniting the family. Progress reports were to be made by Ms. Tessier to the Children's Aid Society of Cape Breton.
>
> ..... That it was also made clear to [Mrs. X] and [Mr. X] that once visiting privileges were granted, they would be withdrawn at the first indication to the Children's Aid Society that the children were suffering through these visits."

Mr. Chisholm told the County Court in 1987 he understood the proposal involving the counsellor was,

> "to see both parents mutually, to attempt to resolve their differences between themselves,

> and the differences as well around the children's visitation, and parenting, that sort of thing."

Later in 1987, Ms. Tessier told the County Court she was to help the parents reduce their conflict and then visits of the children with their parents could be arranged. She added:

> "Well, I also had an agenda in my own mind too. So we agreed that we would more or less start from the beginning when they first met, their marriage, what happened in their marriage, why it broke down, to explore how, why they thought it broke down, and also a little bit about their own personal backgrounds and how that had affected their marriage."

The Reviewer observes that once more an unrealistic expectation is placed upon the counsellor and the parents. Mrs. X had just stated in Family Court the previous month that she would agree to access visits if they were supervised so the children could regain a sense of security with the father. Her concerns continued to be ignored about the possibility of sexual abuse and which had never been addressed by the agency in terms of an investigation by them to determine whether there were reasonable and probable grounds to believe the children were at risk.

In early July 1988 the children had been moved to a different foster family in the area as the first foster family had moved to another part of the province. The older boy had been told at the time of apprehension that he would be returning home in the summer so he was not overly upset to learn of their leaving. The move to a new foster home however, quickly brought a noticeable change in the children's behaviour however. Ms. MacMillan noted the new foster mother's

concerns that the boys were reluctant to eat. When Ms. MacMillan visited them, she found them both depressed and looking very different. After she returned from taking them for a drive the older youngster refused to get out of her car. He was very confused about all that had happened and wanted to live with his mother. Ms. MacMillan called Dr. Blood for consultation and he advised that little could be done until the matter was resolved in the upcoming Hearing.

When the Wardship decision was made Ms. MacMillan noted how difficult this was for the older boy to understand. Because the outcome of the counselling with Ms. Tessier was still unknown she could not tell the boys of the upcoming plan. Ms. MacMillan noted in her recording:

> "Plans for the boys must be put into place very soon. They cannot be left in limbo much longer without being further damaged psychologically."

Ms. MacMillan asked Dr. Blood to see the children as the children had reportedly been upset at having their mother's picture in the bedroom. The teacher reported the older boy was having no problems in school. Both boys were gradually beginning to settle down in their new foster home.

On October 20, 1988 a case conference was held with Ms. Tessier, Mr. Chisholm and Mr. MacPherson. Ms. Tessier reported that after four or five visits things were going well and both parents were trying their best. It was decided to begin visits with the children. The first was arranged for November 9th, 1988. When it was over Ms. MacMillan returned the children to the foster home. The foster mother called the worker shortly after to say the older boy, now six and a half years old, refused to take his jacket off and stated that he wished to go home to his mother. The worker returned to talk with him and noted he was depressed and confused. The foster mother also explained that he had been pulling his hair out by twirling it in his fingers. The worker was

unable to ease his mind "because of the uncertainty of the plan to reunite the family." Ms. MacMillan encouraged the foster parents to be patient with him as he was feeling in a state of limbo. Both boys were scheduled to see Dr. Blood on November 15th, 1988.

Ms. Paula Hines who was seeing Mrs. X for individual therapy stated to Ms. MacMillan that Mrs. X was still worried about Mr. X's involvement with the children. Mrs. X had questioned his motive on one of the visits when he whispered to his older son and asked him if he wanted to go to the bathroom. Mrs. X stated in her Discovery Examination that Mr. X kept bringing up negatives about her to Ms. Tessier that made it appear Mrs. X was not wanting to get along with him. She said that was not at all the case and she could not understand his reason for doing that.

The four or five visits with the parents went well as far as the parents were concerned. However these children's visits with their parents raised their hopes to go home with their mother. It was difficult for them to understand why they had been moved, why they had seen their parents, then not seen them, and why they were now once more having visits. The foster mother called Ms. MacMillan very worried about their well-being. The older boy was continuing to pull out his hair and the younger lad had begun to wet the bed. The older boy kept asking how many days would pass before they could go home. The worker noted in her recording:

> "This is taking its toll on [the older boy]. Worker has to tell him the truth, that I don't know. This is taking its toll on [the older boy] as he is displaying problems concentrating in school and has problems sleeping. He gets up during the night and walks around as if in a trance."

> His teacher reported that he had not been working well in school and seemed to be preoccupied with much on his mind.

According to Ms. MacMillan Dr. Blood was shocked when he saw the children. They appeared to be "stunned" and had regressed to the state they were in before the apprehension. Dr. Blood later told the County Court,

> "My feelings were that because of the children's awareness of the issue of their being returned home was once again raised, the subsequent contact with the parents, sort of brought all the issues back, that that was the cause of the regression."

A brief meeting was called on November 29th, 1988 by the agency. Present were Ms. Paula Hines, Dr. Blood, Ms. MacMillan, Ms. Tessier, Mr. Chisholm and Mr. MacPherson who chaired. Ms. Tessier commented that Mrs. X had expressed concern about her husband's motives in one interview and that her fears about abuse were still present. Dr. Blood described the drastic change in the boy's well-being and felt a decision about their future had to be made. He told County Court later:

> "... my assertion was that if you are going to start visits you better make sure they were going home, so this was a meeting to determine where things stand with this plan, whether it was a reasonable thing to be doing. Were we really reasonably working to these kids once again going back to one or both or some combination of [Mr. X] and [Mrs. X].

Ms. Tessier did not feel totally optimistic about the outcome but expressed willingness to continue her work with the parents. Ms. Hines felt the mother should be given a chance. The agency's decision nonetheless was to terminate all contact of the children with their parents. The former foster parents were contacted immediately to ascertain their willingness to take the two boys. Although they were only given two days notice they were pleased to see their return. Ms. Hines who had to leave the meeting early was later shocked to learn of the decision, particularly as Mr. Chisholm had told her in July before the decision for Wardship that he thought the children would be going back to Mrs. X after the hearing. When Mr. MacPherson was questioned in County Court why the option to return the children to the mother with no access to Mr. X, was not considered first, he replied,

> "I didn't believe that was my .... that is what the Court was there to decide. We were taking the middle of the road, we weren't favouring [Mrs. X] and we weren't favouring [Mr. X]. We were representing what was happening to the children and that was the whole issue of custody, one over the other. Single custody if you will, we left squarely to the Court as well .... and it wasn't entertained."

Mr. Chisholm told the County Court in 1989, the reason for that decision:

> ".... we had tried to encourage reconciliation, harmony to resolve the dispute, to resolve the tensions, the stresses that the children were having with their parents. And that after, as I said already, the meetings with the children that were monitored by, as I recollect, by Fran Tessier

and Agnes MacMillan, and the detrimental consequences that were arising, further allegations, the sexual abuse, and again, tension and stress, that the conclusion was that everything humanly possible had been done in order to rectify the difficulties that the children were experiencing. And it was felt at that time that it would be best to have the children permanently removed from the parent."

The parents were phoned by Mr. Chisholm the next morning and advised that a meeting about the children had been held the day before and that he and Mr. MacPherson would like to see both parents at 2 p.m. that afternoon. Mrs. X told the County Court the content of that call and of the meeting that she was looking forward to because she expected the return of the children home,

"Jim Chisholm, he called and said he needed information to pay the foster people the money from Halifax. They needed background information of all my background. He told me there was a meeting at 2 p.m. but would I have the time to tell him the information on the phone now. --- It was all to do with my family background. Sisters, brothers, sickness, all children's names, their husbands. This is the way it went. I never thought to question it at the time, thinking that there was a meeting that afternoon and I am going to get the children back. It was afterwards, it was when we went to the meeting in the afternoon that there was no getting the children back. They said that we were no longer, no longer

> any part of the children's lives, that they were going to be, they had permanent plans for the children and we were not included."

It was clear to the Reviewer that Mr. Chisholm was gathering family background information to prepare a Social History on the children, now that it had been decided the children would remain in permanent care. Not only did he fail to inform Mrs. X of the real reason for getting this information, but the timing of the request was not appropriate. The lack of honesty in gaining this information was unprofessional and did not make Mrs. X any more trustful of the worker.

Both parents were totally unprepared for the news of Wardship. Ms. Tessier told County court that the parents came to see her later. Mr. X was

> "very, very upset and devastated with the fact that he wouldn't be seeing his children , very sad about it.---- [Mrs. X] was upset too. And she said that she was going to do everything she could to try to get her children back."

The next day after the meeting with the parents, the children were suddenly moved by Mr. MacPherson and Ms. MacMillan to the former foster family in another part of the province. The foster parents that the child had just left, felt very confused and hurt at this sudden action as they had grown very fond of the boys and had indicated to Ms. MacMillan their interest in adopting the children were that possibility to occur. They explained to the Reviewer they had made plans for Christmas that included the youngsters and had never considered they would be taken with so little warning. They were left wondering whether the agency considered them inadequate as foster parents as they did not know the reason for the move. Neither they

nor Mr. or Mrs. X were told by the agency where the children were placed, as the agency's plan was now to have them adopted.

The first set of foster parents described to Dr. Blood how the children appeared on their return to them on December 1, 1988. Dr. Blood reported in a letter to Mr. Chisholm:

> "[The foster mother] reports that when the two boys returned to her home in December, she and her husband were quite concerned about their behaviour. [The older boy] was described as very hyper, forgetful and difficult to manage. He was also reported to have some difficulties in school. [The foster mother] felt that [the older boy] was tending to keep his feeling inside. He demonstrated a habit of twisting at his hair and as a result, a bald spot had developed. Both boys were described as difficult to manage. [The younger boy] was reported to be wetting the bed.

These were so clearly the signs of children dealing with their feelings of loss that Ms. MacMillan gave the parents a copy of Claudia Jewett's well-known book, "Helping Children Cope with Separation and Loss." Claudia Jewett summarized the reactions of children to loss:

> "Fears of personal survival; separation anxiety; impaired ability to make emotional attachments; sadness, anger, guilt, shame, and despair; problems with control issues; drops in developmental energy; loss of self-esteem; and pessimism and feeling of futility are all to be expected in the grieving child."

Not only were the boys having to face the fact they would not be going home to their mother but they would no longer be having visits with their parents. Added to that they were suddenly moved from a home they had been adjusting to over the past six months. It was fortunate for them they were kept together and were placed back in a home in which they still had familiarity. There is no evidence to suggest why this move had to be made so abruptly that there could be no preparation of the children. Although it may have come out of concern to spare the children from being in limbo any longer it did not show an awareness of the need to plan the way in which news was to be conveyed to the children nor to consider the timing of the move. Without ensuring children have worked through their feelings of loss there is an increased risk in their ability to deal with emotional stress in adulthood. No doubt recognizing this, Ms. Agnes MacMillan asked the child welfare agency in their area to offer extra support to the children if they needed help in dealing with the permanent separation from their parents.

December 1, 1988 to January 19, 1990 - The Appeal

Mrs. X made application to have her appeal of Judge Darryl Wilson's Family Court decision of August 19, 1988 heard by way trial 'de novo'. On March 21, 1989 Judge Ryan of the County Court granted the application. The matter was heard before Judge G. S. MacDonald during thirteen days of testimony in September 1989.

In the meantime both boys remained in foster care and were seen by Dr. Blood in mid April 1989. The younger boy was happy and content and had none of the withdrawn behaviour he had displayed five months before. The older youngster appeared more relaxed but was still somewhat anxious and cautious. He continued to clearly demonstrate a strong attachment to his mother even though he appeared happy in the foster home. The foster mother noted that over time both boys began to mention their mother more in casual conversation but rarely mentioned their father. The older youngster indicated he would

like to go home but at the same time had some ambivalence about leaving his foster parents. The foster mother stated to Dr. Blood that the younger son wished to remain where he was.

Dr. Blood noted in his report to Mr. Chisholm that it was to be expected that issues around separation and attachment would be more difficult for the older boy given his age when he came into care. The recent stability in their lives had been positive in the psychologist's view. Still he pointed out the difficulty of predicting the long term outcome of the older boy's remaining in care. Were the children to be returned to their mother, Dr. Blood stated an initial regression in terms of behaviour and a period of adjustment should be expected. The long term consequences of a return home were difficult to predict.

The Hearings in the trial 'de novo' were completed on September 28, 1989. Evidence from those Hearings has already been referred to in the course of this report. In addition to all the witnesses were three written reports and testimony from consultants, Dr. Rosemarie Sampson, psychologist from Halifax, N. S., called by the mother's lawyer; Mr. Ross Dawson, social worker from Toronto, Ontario, called by the father's lawyer; and Dr. Marliess Sudermann, psychologist from London, Ontario, a consultant for the Court.

Mr. Ross Dawson was known to the agency for his child welfare training programs in this province and for consultation work. The agency contacted him after hearing Dr. Blood's testimony to ascertain his views on their case. It was decided it would be helpful to the direction being taken by the Children's Aid Society to have his opinions presented on five particular questions they had raised with him. He was sent materials to study which the Reviewer notes did not include an RCMP report of August 3, 1987 in which the mothers's account of what the boys had told her was clearly described. As "the interests of Mr. X and the agency were concurrent interests", the Reviewer was told by Mr. Leo MacPhee that the agency arranged to have Mr. Dawson appear on behalf of the father. The agency viewed this as being more tacticly

advantageous than their applying for permission to tender a further expert's report at that stage of the proceedings. The costs of this consultation were billed to Mr. MacDonald's law firm and later paid for by the agency. Even if the points of view of the agency and Mr. X were the same, the agency lost their appearance of impartiality in this matter by lending financial and tactical support to one of the parties.

The Reviewer notes that all three consultants raised questions about the way in which the agency handled the matter. Yet at no time did it appear that Mr. Chisholm or Mr. MacPherson considered the validity of those comments. Rather they made efforts to discredit the reports from Dr. Rosemarie Sampson and Dr. Marliess Sudermann. The Reviewer notes that the same attitude prevailed with respect to responding to concerns that were raised by the community over how the case was being handled. It was the responsibility of the Executive Director and/or the Board of Directors who have final authority to have taken constructive steps to have had the handling of the matter examined as a result of these criticisms.

Dr. Sudermann recommended the boys be returned to the custody of their mother with weekend visits prior to the move, that Mr. X have access visits supervised by the child welfare agency or a counselling agency, that Mrs. X obtain supportive counselling to assist her with the boy's readjustment, and that Mrs. X endeavour to keep up occasional contacts with the foster family so that the boys could maintain the positive relationship they had with that family.

Judge MacDonald ordered that week-end visits of the sons with their mother commence no later than December 29, 1989. This was arranged and the boys were very excited about their first visit with their mother. They returned to the foster home extremely active and difficult to manage. After the second visit the older boy asked when he could go home. The agency decided to set that date for January 19, 1990. On January 25th, 1990 the solicitor for the agency, Mr. Leo MacPhee, advised the Court that in view of the status of the children

the Society requested leave to abandon its claim for the continued Wardship of the children. Judge MacDonald subsequently returned the custody of the children to their mother. Mr. X was granted monthly visits with his children as of July, 1990 with supervision provided by the Cape Breton Mental Health Clinic and the matter of access to be reviewed by the Court in December 1990.

The children returned home and displayed very aggressive behaviour. The older boy was extremely angry and blamed his mother for not trying to stop "the men" from taking them. He felt he should have tried to climb a tree or to have run away to escape being taken.

Excerpts from a letter to the Reviewer from Ms. Paula Hines at the Cape Breton Mental Health Clinic indicate the nature of the boy's difficulties.

> "Since the boys have returned, there certainly have been problems, mostly with discipline and dealing with their anger. ... A lot of the anger within the children is related to a sense of abandonment by her [their mother]. They cannot understand how she let them go when "the men" came. They also have difficulty trusting adults, partly because of the "abandonment" by parents. .... Furthermore, this is partly due to the way certain Children's Aid Society worker's handled them, often saying things to them and not following through [such as visits]. ... Although discipline and aggression are still problems and although anger and distrust prevail, the children have settled in. ... Nightmares are few and far between now, but worries about the "bad men coming", still exist. They see men that look like the ones

that came and took them away and they become scared."

In February 1990 the agency obtained tutoring services for the older boy to help overcome word recognition and spelling problems, and to assist in his adjustment in transferring schools. From that point forward the agency staff were no longer involved in the matter. That same month negotiations on the payment of costs were entered into by the agency with the lawyers for Mr. X and Mrs. X. The terms of settlement reached were that the Children's Aid Society of Cape Breton paid the Taxable Solicitor and Clients costs and Taxable Disbursements of Mrs. X from the date of the filing of the appeal on her behalf (October 14, 1988) until the date of the concluding court appearance on February 8, 1990, a sum of $146,405. The Children's Aid Society of Cape Breton also agreed to pay the sum of $3,000 to Mrs. X on a strictly "Without Prejudice" basis and without any admission of liability on their part. Mrs. X executed a completed release to the Children's Aid Society of Cape Breton for any claim she may have against the agency on account of their actions leading up to and including and since the apprehension of her two children. The terms were to remain confidential by the parties but were partially waived to allow them to participate in this review. The Children's Aid Society of Cape Breton also agreed to pay $1,000 to Mr. X.

Mrs. X explained to the Reviewer that she signed this agreement because she felt she had no alternative to her financial dilemma. She was substantially in debt from all her legal costs and realized she would have no money to care for her children when they were returned to her care.

ROLES AND RESPONSIBILITIES

A. The Role and Responsibilities of the Child Protection Worker

The two major responsibilities in the job description for protection worker in the agency was that of providing social work services to children in their families and of taking action under the Children's Services Act to protect children on their caseload who were alleged to be abused or neglected. The listing of typical duties included home visits, regular supervision follow-up, on-going counselling with parents, determination and co-ordination of internal and external case conferences regarding a child and his/her family needs, liaison to community resources, and providing voluntary care services whenever possible to protect a child. Emergency duty after regular working hours, arranging transportation for children, maintaining case recording and completing social histories on children coming into permanent care were some of the responsibilities listed under occasional duties.

Among the knowledge and special skills required for the position were some degree of understanding of problems involved in parenthood, family life and human behaviour as well as interviewing techniques and crisis intervention. The worker was expected to possess genuine warmth, compassion and ingenuity, together with a high degree of self-confidence and decision-making ability. The protection worker was held responsible for their own work and was expected to attend and participate in staff training program. A protection worker also had to be qualified for appointment as an Agent of the Minister to be able to carry out the apprehension function when it was required.

Mr. Chisholm with five years experience in child welfare and Mr. MacPherson with eleven years experience as of 1987, shared responsibility for the direction in this case. Mr. Chisholm told the Reviewer they held no difference of opinion on how things were handled. As this report has already pointed out, home visits were

generally done by Mr. Chisholm to question Mrs. X about her concerns, serve Notices and pick up the children on occasion for their visits.

A thorough investigation had it been done may well have found no evidence of sexual abuse. It may have proven the allegations to be false or it may have found that sexual molestation had occurred. Without this investigation the fears of Mrs. X were never appropriately addressed while the anger and frustration towards her by her ex-husband continued to heighten. The more she pressed for some action the more Mr. Chisholm and Mr. MacPherson reacted to her persistence with a growing sense of frustration and annoyance which was felt by Mrs. X. It was reported to the Reviewer from some staff and from several people in the community that Mr. Chisholm was heard to show a lack of respect for Mrs. X in the way he described her to others and the comments he made with respect to the role religion played in her life. Mr. X on the other hand was viewed by the two workers with considerable empathy for his situation and he felt Mr. MacPherson, Mr. Chisholm and Mr. Bowes were very supportive in giving him time to talk whenever he came to the office after his shifts at work.

The lack of case recording in this complex matter was clearly unacceptable. Mr. Chisholm's record of the matter for the most part was found in a letter of referral to the Cape Breton Mental Health Clinic and in several summaries to the Child Abuse Registry with the Department of Community Services in Halifax. His letters inferred more action had been initiated by the agency than was the case and failed to disclose important information if it was not in line with his assessment of the problem. His more open personal views of the matter were also summarized by the RCMP in their reports and reveal the same inferences that a number of investigations had been done as each allegation had been reported. In several cases his version of contacts with the RCMP were not substantiated by their reports.

In the opinion of the Reviewer the court process was used by Mr. Chisholm and Mr. MacPherson to force Mrs. X to stop her alleged

coaching of the children with false allegations so she could deny access visits to her ex-husband. Although this was never so openly stated, there was sufficient evidence in their testimony to indicate they firmly believed that motive to have been the core stumbling block to an agreement on access visits. One result of this was their immediate linking of any deterioration in the children's behaviour to the stress of their mother's concerns about access visits. They were unable to recognize that the children's behaviour might also be reflecting their anxiety if possible abuse was occurring or when taken into care their confusion about the sudden changes in their young lives.

In reviewing the handling of this matter by Mr. Chisholm his performance as a protection worker fell below acceptable standards of practice. He failed to demonstrate an ability to sensitively listen to Mrs. X with an open mind, to document and explore the specific concerns she was told by the children and to recognize the indicators that would justify an investigation to determine whether the children were at reasonable and probable risk. He showed a lack of knowledge basic to the investigative process, the evaluation of risk to children and some understanding of the characteristics of those who may abuse. When cross-examined in County Court by Mr. Parsons as to why he would not interview the children, he responded:

> "There was no justification to interview the children. I am a Protection worker but I can't go out and live with families. I mean we manipulate what is available in the environment around the children to build safety measures."

What steps could have been taken were often avoided lest it appear they considered Mr. X guilty of an offense. In the context of rights the father's rights were given precedence over the children's rights for protection. No effort was made at any time to meet with both parents together other than to tell the parents of decisions they themselves had

already made. The absence of such an approach further polarized the positions of the parents rather than engaging them jointly in the resolution of a plan for supervised access for example if the agency had decided it was too late to conduct a proper investigation. In the opinion of the Reviewer using the court process up to and including apprehension and Wardship was unsupported by the evidence required for such an intervention and constituted an abuse of the authority given to an Agent. The impact of these errors of judgment had a profound effect on the lives of both parents and on the two young boys. The full effects of their separation from their home and its security may not be known for some time.

The Reviewer noted that Mr. Chisholm has undertaken at least four very related training sessions since February 1988 - one a lengthy training program To Empower Front Line Workers in Sexual Abuse, a Child Welfare Seminar, Use of Anatomically Correct Dolls, a workshop by Mr. Ross Dawson, and another on Adult Survivors of Child Sexual Abuse. In spite of this training Mr. Chisholm told the Reviewer that had he to handle this matter again, he would do so in exactly the same way.

B. The Role and Responsibilities of the Director of Protection Services.

This position was responsible to the Executive Director of the agency for the effective management, direction, delivery and supervision of the agency's child protection program. Its terms of reference were written in 1985 by Mr. MacPherson and approved by the Executive Director at that time. Among the varied responsibilities were the ensuring of quality services within budget allocations and in accordance with agency policy, the development of agency programs and the supervision and evaluation of the eight staff responsible to the Director. With respect to the Child Protection Unit the Director's responsibility was to regularly assess with staff the goals set for each

family and child on the Protection caseload, to direct the worker's casework plan through ongoing supervision, evaluation and case record reviews, to be "knowledgeable of each and every case to ensure the appropriate direction to the field workers" and to maintain "the full and final authority over the action taken in a given case." The Director who had to be knowledgeable of all child welfare legislation was responsible for the effective court presentations by field workers and subsequent recommendations to the Court. One of the foremost challenges cited in the job specification was the maintenance of "a high level of quality intervention with families and children."

The supervision given by Mr. MacPherson to Mr. Chisholm appears to have been done in a co-operative atmosphere and with no conflict over the casework management direction in this matter. Mr. MacPherson took a very leading role in case conferences and in providing direction to the agency's lawyer when the matter was brought before the Family Court. He was very involved in this particular protection issue, and saw his supervisory role here as including direct service as well as holding full and final authority over the action taken in the case. He told the Reviewer that he would still handle the matter of Mrs. X in the same way had he to do it again.

In December 1987 Mr. MacPherson issued a directive to staff outlining the procedure to be followed in responding to complaints of physical and sexual abuse. The purpose of developing the procedure was to keep in mind that the agency "considers the safety and protection of children to be of paramount importance." The procedure basically outlines the agency's agreement to contact the police if the agent feels "in his opinion, a criminal offense has occurred." Whatever action is to be taken is first jointly decided upon by the police officer and the agent, "though final decisions may be made by others." If the police receive a complaint, the police officer is to call the Agent to jointly decide how to investigate the complaint. "A joint decision may be made, bearing in mind the final decision may be made by others." Although the intent of this procedure was "to provide a rapid response

to a child who is or may be in danger, and to ensure comprehensive rehabilitative follow-up to a child and family", it had flaws. The procedure had it been put into effect six months earlier would not have resulted in this matter being handled any differently. The agency on the basis of their assessment of the facts would still not have notified the RCMP. When the RCMP did follow the protocol on receiving the complaints from Mrs. X and contact the agency, the worker did not decide with them upon a joint investigation. Rather the police were assured they had fully investigated already and had the matter in hand. This points out the subjective control exercised by Mr. MacPherson over decision-making that resulted from his not having outlined criteria in his procedures for the kinds of referrals and case situations that merited such joint investigations by the agency.

Mr. MacPherson as supervisor had a clear mandate to ensure that Mr. Chisholm carried out his professional responsibilities for casework recording. Not only was this not done but he himself was negligent in not keeping documentation of his own direct involvement. It was explained to the Reviewer that this was due to the fact caseloads were so heavy in March 1987. Seven staff had advised Mr. MacPherson in writing they could no longer be completely responsible for what happened in their caseloads. Mr. Chisholm was among those who felt the high caseload and limited resources prevented him from completely fulfilling the mandate expected of him. Mr. MacPherson forwarded these letters on to Mr. Bowes Executive Director but without initiating any priority setting for recording on his part as the supervisor in charge of the program. Mr. MacPherson also did not do the required annual evaluations of Mr. Chisholm during 1987-1989 consisting of written documentation of his performance and any recommendations for appropriate future action. Such an evaluation is another means of accountability in ensuring a quality service is being provided to the public.

Mr. MacPherson also had a professional responsibility to ensure a change in social workers was made when it was clear the working

relationship between the client and worker had deteriorated. Among the reasons Mr. MacPherson gave the Reviewer for his decision was that he had never allowed such changes before and that if it were done in this case it would have made the worker feel guilty. Mr. Chisholm however had already attended a meeting with supervisor Ms. O'Neill and knew that the reason for the change was because a female worker was thought to be advisable. As pointed out earlier, Mrs. X requested a change of social worker of Mr. Bowes who had given her his agreement that it would be done. However Mr. MacPherson over-ruled the decision of the Executive Director, an occurrence that did not surprise Mrs. X and others who felt this level of authority in the agency was frequently claimed by Mr. MacPherson.

Mr. MacPherson had convinced himself that Mrs. X had ulterior motives in bringing forward allegations at a time when access visits were becoming a problem. He viewed the allegations as they arose to be timed by her to an impending Court Hearing and had also discounted their validity on that assumption. Mr. MacPherson failed to see that an investigation was undertaken when it was justified on the basis of the fears expressed by the boys to the mother. Had Mr. MacPherson ensured his worker had provided him with carefully documented pieces of information being given by the boys, he would have been in a better position to see an investigation was warranted. His direct service showed a lack of skills in conflict resolution, in the appropriate use of authority and in dealing appropriately with his own feelings of frustration in this matter. He lacked knowledge about the effects of separation and loss on children that limited his ability to assess the effect of their behaviour from repeated changes in living arrangements.

Another of Mr. MacPherson's reasons for not investigating aside from what he considered was insufficient evidence was his belief that interviewing the children about such a sensitive subject would be too traumatic for them. Yet this is the role of a child protection worker and it can be done with sensitivity to children's feelings, their age and their ability to tell their own story. When Dr. Blood did the interview

the older boy clearly indicated what had happened that he did not like. Still Mr. MacPherson took no action believing now that the boy's disclosure had been contaminated by the mother's audiotape of the youngster's concerns voiced several months before. To then resort to increasing the intervention of the Court to bring a change in the impasse was unwarranted, punitive and an abuse of power. Mr. MacPherson told the Reviewer he had not thought the agency would get Wardship of the children. Rather he wanted to shock the parents into realizing they indeed could lose their children as the agency had been warning for some time.

The handling of the matter of Mrs. X became publicly known during the County Court Hearings. Increasing criticism of the agency was voiced at the manner in which the staff had responded to the original request of Mrs. X to have her son interviewed and the events that ensued. In order to assist the Board of Directors in understanding the events in the matter and the efforts made to fulfil the agency's mandate, Mr. MacPherson had an eight page case summary prepared for the Board's review. No names of clients or workers were mentioned. This was given to Mr. Bowes who had it circulated to the Board following their meeting with the agency's lawyer Mr. Leo MacPhee on January 24, 1990. The introduction spelled out that the purpose of this review was in part because "many of the facts have been misrepresented or ignored, either due to a lack of information or perhaps in order to support certain partisan points of view." The closing of the summary indicated it had been prepared for the President of the Board to make public. However the agency's lawyer Mr. Leo MacPhee told the Reviewer he had advised Mr. Bowes and Mr. MacPherson against doing such a lengthy release and as a result they had not done so.

When the Reviewer read the summary the inaccuracies were so apparent that it was clear it had been written to put the actions of Mr. Chisholm and Mr. MacPherson in the best possible light. In one of these instances, the Board was told that Mr. Ross Dawson a consultant

brought into the County Court in 1989 by the lawyer for the father had given the following information to the Court. Summarized by Mr. MacPherson, it read;

> "Upon reviewing the case materials he [Mr. Dawson] presented an opinion that the apprehension of the children was justified and in their best interests. He also felt that the Children's Aid had acted in a professional manner and one that conformed to the established norms of child protection work. In effect then this witness supported the actions taken by Children's Aid and the decision of the Family Court, and agreed with the initial testimony of Dr. Blood."

In Mr. Dawson's actual report, he wrote that although neither the audiotape nor the videotape could in themselves actually verify that sexual abuse had occurred, nonetheless the information on the videotaped disclosure warranted the undertaking of an investigation.

> "I do, however, believe a full child abuse investigation should have been conducted following the videotape interview conducted by Doctor Blood. I believe this was necessary for the following reasons:
>
> (a) To fulfil the agency's child protection mandate;
> (b) A credible professional who had interviewed this child suspected child abuse and recommended a full investigation;
> (c) To determine if any additional evidence was available;
> (d) During the interview with Doctor Blood, the child clearly demonstrated some sexual activity between an adult and himself. While not necessarily indicative of sexual abuse or sexual purpose,

further investigation was necessary in an effort to determine whether abuse occurred."

Mr. Dawson went on to further explain that a medical examination, a specialized assessment of Mr. X *with his consent and* further investigative interviews with the child would have been in order. Mr. Dawson's report is very much different than the summary of that report given by Mr. MacPherson.

The task of writing this summary to the Board was given by Mr. MacPherson to Mr. Barry Moore who was in charge of public relations work. Mr. Moore told the Reviewer he knew little about the case, and had been given the files on the matter as a source of information. Mr. Chisholm told the Reviewer he had read Mr. Moore's draft and had made some corrections. It then went to Mr. MacPherson for his review and approval before he took it to Mr. Bowes as a completed and correct summary of events. It was not made public on the advice of the agency's lawyer but it was circulated to the Board of Directors. The summary contained no names of family members nor of foster parents.

When Mr. MacPherson was first asked by the Reviewer about the summary, he expressed dismay it was still in the file and that it had not been destroyed. He explained that Mr. Moore had written it using the entire series of court transcripts as his source of information. According to Mr. MacPherson it contained so many inaccuracies that Mr. MacPherson objected strenuously to Mr. Moore and Mr. Bowes that it not be circulated. Neither Mr. Moore nor Mr. Bowes recall any such objections from Mr. MacPherson. Both understood the summary of the case they received from Mr. MacPherson was correct. The Reviewer is of the opinion that Mr. MacPherson deliberately misinformed the Executive Director and the Board, an action that is regarded by the Reviewer as unethical professional conduct.

C. The Role and Responsibilities of the Executive Director.

The Children's Aid Society of Cape Breton had a joint service arrangement with the Department of Community Services until October 1990. At that time the Department responded to the Board's earlier request to have a full-time Executive Director rather than having fifty percent of the time of the Regional Administrator to be in charge of the private agency's child welfare mandate. During the time of the handling of the matter of Mrs. X however, the agency had a half-time Executive Director Mr. Sandy Bowes.

The effectiveness of social work practice in an agency is dependent on the Executive Director's capacity to translate policies into services and to provide staff with the administrative tools and support systems necessary for their work. This is done through establishing those policies, procedures and guidelines necessary for effective social work practice in child protection; hiring staff with a professional degree in social work; having clearly written job descriptions; evaluating supervisory staff; and establishing measures to ensure program and service accountability. The Executive Director is also expected to promote inter-agency working relationships and to co-ordinate the community's services to provide a comprehensive child protection service.

In the position description of the Executive Director of the Children's Aid Society of Cape Breton, the incumbent was responsible to the agency's Board of Directors for the entire administration and delivery of child welfare services offered by the agency which included protection services, child care services, a residential centre, and financial operation of the Society. Reporting to the Executive Director were four management positions, the Director of Protection Services, Director of Placement Services, the Director of the Residential Centre, and the Chief Accountant. The specific responsibilities included the effective administration of the agency's programs, the identification of new service needs, and the development and implementation of new

programs. Liaison with other government departments and with the community as well as maintaining a good working relationship with the Board of Directors was also part of the scope of the position.

In terms of the handling of the case of Mrs. X Mr. Bowes relied on Mr. MacPherson to take charge of the protection matter which was in keeping with the stated responsibilities of the Director of Protection Services. However, it was still the responsibility of the Executive Director to ensure the Director reported to him regularly, and that the standards of service were being maintained at an adequate level. Because Mr. Bowes relied entirely on the information from Mr. MacPherson and because no case recording had been required, he was not in a position to objectively review the way the matter was being handled. As a result he maintained his support for Mr. MacPherson's actions, and kept the Board's Executive Committee informed of what he knew of the matter. Mr. Bowes became involved when Mrs. X called for a change of social worker and when she phoned him to talk about the lack of action the agency was taking in the matter. She felt Mr. Bowes had understood her need to protect her children, and that he had been willing to request a new worker although that had not happened.

Individuals and groups from the community conveyed to Mr. Bowes their dissatisfaction with the agency's handling of the case by marching outside the agency and by a meeting with him and one of their spokespersons. Inquiries about seeking possible nomination to the Board were met by Mr. Bowes' response that there were no available positions. The Reviewer was advised the situation was otherwise. The agency's Annual Meeting was an event that some community members hoped would provide an opportunity to let the entire Board know of their concerns. They attended the meeting, but were given no opportunity to do so, apparently because they had not requested their item be placed on the agenda in advance. The result of all of these instances indicates to the Reviewer that the community felt unable to participate or affect any change. In discussions with the Reviewer, Mr. Bowes expressed the view that those in the community most concerned

with the service given Mrs. X were a small group of her supporters mainly comprised of feminists, members of a charismatic religious movement and those belonging to particular women's interest groups. The comment conveyed the impression to the Reviewer that Mr. Bowes found it had been prudent to listen to their concerns as a public relations exercise, but that he had found little validity in their concerns. This was indeed regrettable because the knowledgeable voice of concern raised by members of the community who had heard the evidence at the County Court Hearings could have led to a recommendation from Mr. Bowes to the Board to have the Directors authorize a thorough review of the matter by an independent professional social worker.

Mr. Bowes conducted no annual evaluation of Mr. MacPherson during his time in the agency as Executive Director in spite of legitimate concerns that had been expressed to him on a number of occasions. He had not provided leadership in developing an agency policy with respect to handling sexual abuse referrals nor initiated protocols with other professionals that would have clearly spelled out everyone's responsibilities in a co-ordinated approach to investigations. The Reviewer also noted his inability to ensure Mr. MacPherson carried out his decision to change workers. When complaints came to him about the handling of the matter, Mr. Bowes should have requested the case documentation. Had none been found he should have taken appropriate steps to ensure its completion in accordance with the agency's policy.

Mr. Bowes came into the position of Executive Director with no professional social work training and with little child welfare experience. He recognized the drawback this constituted to his work as well as the burden of increasing responsibilities of the two positions he was holding. This led to his recommendation for a full-time Executive Director. In the meantime however he was responsible to the Board for the agency's total program delivery and its successes or failures.

D. The Role and Responsibility of the Board of Directors

The Board is responsible for the overall operation of the agency in all its functions and holds final authority within the agency. It governs its work through a committee system which brings to the Board recommendations for the approval of financial budgets, program evaluations, program policies, the setting of priorities and recommendations for new projects. The Board does not become involved in the handling of cases but is responsible for ensuring that program policies for handling them are prepared by staff and are forwarded by the Executive Director for their review and approval.

With respect to the matter of Mrs. X, the Board's Executive Committee was kept most current of the situation as it became more public. The Executive approved the Discovery Examination of Dr. Sudermann and the filing with the County Court of an Order confirming the return of the custody of the children to the mother. The entire Board met on January 24, 1990 and heard Mr. Leo MacPhee report his findings and recommendations. Shortly thereafter they received the case summary prepared by the Director Mr. Ian MacPherson. In February, May, and June the Executive met further to consider others matters relating to the follow-up of the matter. In June, Mr. Bowes reported to the Executive that funds had been allocated by the Department for the full-time Executive Director position requested by the agency.

The Reviewer found that the Board members in general were not as apprised as the Executive Committee on the issues relating to the case of Mrs. X and that more frequent meetings of all the Board members would have been helpful. In meeting with the Board President Mr. Greg Boone the Reviewer was told by him that he recognized that people with whom the agency worked could be difficult, and that he knew of Mrs. X as she lived in the same area as that from which he came. This comment reminded the Reviewer that Mrs. X was also known to a number of the agency staff who either lived in her same area or who

had relatives living nearby. This factor made it all the more necessary for professionals and others associated with the agency to ensure that outside opinions from others did not jeopardize their own professional judgment.

In summary the Reviewer believes the Board should have initiated their own review of the matter by an outside consultant once they were alerted to possible problems by concerned citizens. This would have shown the community they were prepared to exercise their mandate and assume their responsibility for ensuring a quality service was being delivered by their Society. Several Board members told the Reviewer they were prepared to implement the recommendations of this review. In so doing they will be showing the community they are able and willing to take the necessary steps to prevent any matter being handled in this manner again.

SUMMARY

The case of Mrs. X is one in which the Reviewer found major errors in professional judgment and violations of the Code of Ethics. The casework decisions made by Mr. Chisholm and Mr. MacPherson were done in the firm belief they were protecting two children from emotional abuse by their mother. High caseloads, limited resources and crowded working conditions created a difficult situation in which to maintain an adequate standard of service. Nonetheless these factors did not play as significant a role in the handling of the matter of Mrs. X as did the workers' biased attitudes, the lack of sensitivity, the abuse of authority and the need for control. The lack of knowledge with respect to the investigative process and the failure to give priority to the protection of the children in a situation of possible risk directly contributed to the sequence of events.

The Reviewer noted discrimination against Mrs. X throughout the handling of this case, possibly based on a clash of personalities or possibly based on a sexual bias. She was viewed as aggressive, emotional and demanding while Mr. X was seen as dependent and unassertive. The statements of Mr. X were taken at face value whereas the mother's were denied and attribution made of her motivation. She was blamed for making up the allegations, for coaching the children, for emotionally harming her son by making an audiotape to verify his concerns, for going to other professionals when she got no help from the agency, for contaminating the videotaped disclosure, for her restrained reaction when the children were apprehended and negatively looked upon for the support groups who helped her through the isolation of this experience.

The mother's concerns raise and highlight the powerlessness of clients and the importance of checks and balances in the use of the agency's authority. This authority is necessary and must be available to the community through the legislation and the child welfare agency,

as otherwise the community would become crippled in its ability to protect children. The issue in this case is the regrettable abuse of power which was used against Mrs. X and which was disguised as protecting the children.

One learning that these children may take from this whole experience is that grown-ups do not listen when you tell them of your problems and that instead of being helped, your are punished. The task now is to help them with new learnings for the years ahead.

RECOMMENDATIONS

1. That the Board of Directors of the Children's Aid Society of Cape Breton terminate the employment of supervisor Mr. Ian MacPherson and caseworker Mr. Jim Chisholm.

2. That the Board of Directors of the Children's Aid Society of Cape Breton fill the now full-time vacant position of Executive Director with an administrator who holds a Master of Social Work degree. That person should possess a body of knowledge regarding the administrative process and have had direct child protection experience. The Reviewer believes it would be desirable for the Executive Director to be appointed from outside the agency.

3. That the incoming Executive Director appoints a Director who holds a Master of Social Work degree, who possesses a body of knowledge of the supervisory process and who has had direct child protection experience.

4. That the Board of the Children's Aid Society of Cape Breton make the following financial compensation to Mr. X, Mrs. X, and their children;

   (a) That both Mr. X and Mrs. X be compensated for all legal costs which to date have not been paid by the Children's Aid Society, and in relation to the Notice to Bring and Apprehension Hearings in the Family Court under the Children's Services Act and at the County Court appeal proceedings.

(b) That for a period of five years from January 19, 1990 Mrs. X be paid a monthly sum of money equivalent to the pay she would receive at her place of employment in order for her to remain at home to provide the security that is very much needed by her two young sons.

(c) That the Children's Aid Society of Cape Breton provide funding for such resources as are reasonably necessary for the emotional rehabilitation of the two boys including the cost of any supervised visits by the father which may in future be ordered.

(d) That Mrs. X be provided additional funds by the Children's Aid Society of Cape Breton in an amount adequate to properly compensate her for the emotional trauma she has suffered as a result of the agency's handling of this matter.

5. That the incoming Executive Director give priority to the development of guidelines for the investigation of child abuse and neglect referrals, policies with respect to case documentation, guidelines for annual performance evaluations and clearly written job descriptions.

6. That the incoming Executive Director set up an Interdisciplinary Committee on Sexual Abuse with professionals from the appropriate agencies and the police to develop protocols and training for a co-ordinated response to the handling of sexual abuse referrals.

7. That the Board of Directors of the Children's Aid Society of Cape Breton engage a consultant to conduct a series of orientation sessions on the functions of a voluntary board and the responsibilities of its members and to consider such issues as the frequency of meetings, the roles of Committees, and the Board's relationship to staff and the community. The inclusion of the agency's personnel to one of these sessions would give both the Board and staff the opportunity to have a clear understanding of each other's roles in fulfilling the agency's mandate to be the protector of children.

8. That the provincial government give early consideration to the passing of the proposed amendments to the Social Worker's Act which were submitted in 1989 to the Minister of Community Services. Such legislation would control the title and practice of social work in the province and would establish a Discipline Committee to hear complaints of professional misconduct or incompetence brought against a member. The Committee would have the power to discipline, suspend or revoke a member's right to practice social work in the province.